

**PROCUREMENT SYSTEMS
IN SUB-SAHARAN AFRICAN COUNTRIES**

Hindering or Helping Improve Public Spending?

*Lessons From The World Bank's 2000 to 2008
Country Procurement Assessment Reports*

Brookings Institution - Transparency and Accountability Project
World Bank –Africa Region

February 2009

FOREWORD

Among the most important functions of governments are the management and control of public resources, and planning for the future allocation of these resources. At the same time changes in demographics, global pandemics, and increasing energy and food prices, combined in many cases with misuse or mismanagement of public funds, indicates that the quality of public spending is now of critical importance.

Key to the achievement of quality public spending is sound public expenditure management arrangements that include: (a) a comprehensive and efficient legal framework for public procurement; (b) an institutional framework, made up of agencies with clearly defined responsibilities and adequate numbers of suitably qualified professional staff; (c) a responsible and accountable leadership; (d) procurement arrangements that are supportive of the government's strategic goals and that are based on explicit principles of economy, efficiency, competition and transparency; and (e) adequate government controls and independent scrutiny, including from civil society, of the government's management of public resources.

Objectives

The main objective of this report is to synthesize, based on a sample of countries in Sub-Saharan Africa, how to facilitate achieving the stated goals and improve the quality of public expenditures. In particular, the report seeks to identify, from a regional perspective: (a) cross-cutting strengths and weaknesses of procurement systems; and (b) the characteristics of, and lessons that can be learned from, successful or failed reform programs. In undertaking this analysis, a particular interest is to establish what role, if any, civil society organizations have played, or can play, in promoting transparency and accountability in the public sector.

This paper consists of an executive summary and five sections. Section I gives an overview of the Sub-Saharan Africa region. Section II describes the changes that public procurement has experienced as a state function in the last ten to fifteen years at the international level, and the impact of the Region's history on the development of the systems in the Region. Section III presents a closer look at the CPAR findings by referencing the broad common themes that emerge on the regulatory, institutional, operational and control and integrity aspects of public procurement. Section IV discusses recent procurement reforms in the region and attempts to draw lessons from these experiences and, finally, Section V presents some conclusions and key messages for going forward.

Scope

The report was based primarily on a review of a sample of Country Procurement Assessment Reports undertaken by the World Bank and its partners and supplemented by interviews of World Bank staff who worked on countries included in the sample.

The Country Procurement Assessment Reports in the sample do not deal in depth with issues relating to civil society oversight. Consequently, this report seeks to establish the direction in which civil society oversight is moving and to identify outstanding obstacles in enhancing its role. Further, in the intervening period since the completion of the Country Procurement Assessment Reports that serve as the basis of this report, many governments have embarked on reform programs aimed at addressing some of the weaknesses identified herein. While a full documentation of these reform programs is outside the scope of this review, the report highlights features of the reforms giving a sense of trends since the end of the period covered.

The Brookings Institution supported this report as an input to a larger project, comprising the preparation of a report and strategy on improving the quality of public expenditures, with a particular focus on the role that strengthened civil society institutions can play in this process.

Sample

The sample of Country Procurement Assessment Reports reviewed includes twenty-three countries for which procurement reviews of different scope and depth carried out in the Sub-Saharan Countries in the period from 2000 to 2008.¹ The countries in the sample represent a cross section of large and small countries, with different economic basis from those dependent on services to those with substantial exports of natural resources.²

Country Procurement Assessment Reports

The Country Procurement Assessment Report is an analytical tool that diagnoses the robustness of a country's procurement system and, in the process, facilitates dialogue with the government on needed reforms.³ To this end, its primary objectives are to:

- provide a comprehensive analysis of the country's public sector procurement system, including its existing legal framework, organizational responsibilities and control and oversight capabilities, procedures and practices, and how well these work in practice;

¹Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Congo Brazzaville, Cote d'Ivoire, Democratic Republic of Congo, The Gambia, Ghana, Kenya, Lesotho, Malawi, Mali, Mozambique, Niger, Nigeria, Nigeria -Lagos State, Rwanda, Sierra Leone, Tanzania, Togo, and Uganda. Other Public Expenditures Management and Financial Accountability Reports and Country Procurement Assessment Reports not included in the sample were reviewed to confirm the validity of the general conclusions.

² Most countries in the sample have made progress in improving their systems since the date of the latest CPAR reviewed for this paper. Where progress has been significant, the paper has attempted to indicate the nature and relevance of it. However, the progress made does not affect the substance of the findings presented in the paper.

³<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0..contentMDK:20108359~menuPK:84285~pagePK:84269~piPK:60001558~theSitePK:84266,00.html>

- undertake a general assessment of the institutional, organizational and other risks associated with the procurement process, including identification of procurement practices unacceptable for use in Bank-financed projects;
- develop a prioritized action plan to bring about institutional improvements, and
- assess the competitiveness and performance of the private sector with regard to participation in public procurement, and the adequacy of commercial practices that relate to public procurement.

Until 2004, the Country Procurement Assessment Report was one of a suite of core diagnostic tools that was periodically updated for all World Bank-engaged countries.⁴ Since then, country-specific circumstances are the focus of procurement diagnostics; with their nature and scope driven by the type and level of World Bank engagement, client priorities, and the availability of other relevant information from development partners and the country. More importantly, procurement analytic work now aims at encouraging and helping country leadership in setting and managing a procurement reform strategy.

Recently, there has been increasing international interest in government procurement. This increased interest is triggering a transformation of public procurement into a critical and strategic government function to support economic and social policy implementation and is thus focusing attention on the importance of national procurement systems that meet internationally recognized good practices in public procurement. The OECD, through its Joint Venture on Procurement (a sub-committee of the OECD Working Party on Aid Effectiveness) has, since 2005, been developing a methodology for assessment of national procurement systems. The tool, which is intended to be a universally recognized one, can be used to assess the quality and effectiveness of national procurement systems with the long term goal that countries will improve their national procurement systems to meet internationally recognized standards enabling greater effectiveness in the use of public funds. Although the *OECD/DAC Methodology for Assessment of Public Procurement Systems*⁵ is still being improved, the World Bank increasingly adopts many of the performance indicators that have been developed therein when undertaking procurement diagnostic work.

Task Team and Acknowledgements

This report was prepared with the generous support of the Global Development Program of The Hewlett Foundation under the direction and coordination of Charles Griffin, Senior Fellow, Global Economy and Development Program of The Brookings Institution and V. Krishnakumar, Africa Regional Procurement Manger and Irina Luca, Lead Procurement Specialist of the World Bank.

⁴ CPARs had to be undertaken at least every five years. As a result, current CPAR diagnostics, undertaken by the Bank or jointly with its development partners, is now in place in substantially all African countries with an active World Bank portfolio.

⁵ OECD Methodology for Assessment of National Procurement Systems (Version 4), July 17, 2006 – Available at http://www.oecd.org/document/40/0,2340,en_2649_19101395_37130152_1_1_1_1,00.html

Alfonso Sanchez is the author of the report. Jean-Jacques Lecat carried out the research and provided the input for the Francophone countries. Chinyere Bun interviewed Bank staff and prepared draft notes on the interviews for this report. She also helped Charles Griffin manage the overall task.

The coordinators and the authors are grateful for the contributions of staff who fulfilled the role as peer reviewers or who gave their time for the interviews and opinions. These were: Asha Ayoung, Vivek Srivastava, Marijn Verhowen, Renaud Seligmann, Omowunmi Ladipo, Mbuba Mbungu, Rogaty Kayani, Amadou Toure, Yvan Franusic, and Bernard Abeille.

ACRONYMS

AfDB	The African Development Bank
AFR	Africa Region
AU	African Union
CEMAC	Communauté Economique et Monétaire d’Afrique Centrale (Central Africa Economic and Monetary Community)
CPAR	Country Procurement Assessment Report
CPI	Corruption Perception Index
CPIA	Country Policy and Institutional Assessment
CPS	Country Partnership Strategy
CS	Civil Society
CSO	Civil Society Organization
FOI	Freedom of Information
IFIs	International Financing Institutions
NGOs	Non-Governmental Organizations
OECD	Organization for Economic Cooperation and Development
SAI	Supreme Audit Institution
UEMOA	Union Economique et Monétaire Ouest Africaine (West Africa Economic and Monetary Union)
UNCITRAL	United Nations Commission on International Trade Law
WB	The World Bank

IMPROVING THE QUALITY OF PUBLIC SPENDING IN SUB-SAHARAN AFRICAN COUNTRIES

Lessons from the World Bank's Country Procurement Assessment Reports

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IMPROVING THE QUALITY OF PUBLIC SPENDING IN SUB-SAHARAN AFRICAN COUNTRIES

Lessons from the World Bank's Country Procurement Assessment Reports

Executive Summary

Background

i. The Sub-Saharan Africa Region comprises forty-seven countries that have made much progress in recent years but still face huge challenges for furthering economic growth and poverty reduction. During the 1990s, the continent saw a return to multi-party systems and democratically elected governments and an increasing involvement of civil society in government matters. After decades of stagnation, there were also important advances in education and health indicators, and the region's GDP grew at an average of 5.3 percent in 2006. However, this is less than the 7 percent estimated by the World Bank as the minimum necessary to make significant progress in poverty reduction. Unfortunately, the HIV/AIDS pandemic has been extraordinarily costly to the continent. The International Financing Institutions (IFIs), and international NGOs have been increasingly focusing on Africa by providing policy advice and substantial financing. In some countries like Uganda, IFIs finance about half of the annual government investment program.

ii. With tight fiscal constraints in most countries, and given the substantial resource transfer by the IFIs, there was a general concern to improve the efficiency of expenditures not only externally financed but also with countries' own funds. Most governments and the IFIs agreed that to meet those objectives it was necessary to modernize the public administration in general, and the financial management and procurement systems in particular. Most countries embarked on ambitious reform programs with a strong governance improvement agenda. These efforts coincided with a global transformation of the public procurement function from a merely administrative one into a strategic state sector activity that supports development and interacts with many other state systems. The transformation started in the early 1990s, with the creation of the major international trade agreements like the expansion of the European Union and the World Trade Organization. Increasing public interest in combating corruption and in promoting good governance in public affairs as part of the development assistance agenda and the advent of e-procurement technologies put a greater focus on procurement and management of state funds in even the poorest countries. Debt relief, the HIPC agenda, and the advent of poverty reduction strategies in the late 1990s put more pressure on insuring effective public finance management and procurement systems specifically in Africa.

iii. The task of modernizing procurement and financial management systems in Africa was a daunting one given the heritage left by colonialism and subsequent authoritarian regimes that dominated the political landscape of the region until the 1990s. Procurement reformers in Sub-Saharan Africa faced a legacy of scant institutional, managerial and technical capacity to run complex systems, and outdated or inadequate regulations. Moreover, there was a culture of indifference to compliance with the law that combined with the lack of appropriate controls, created a fertile ground for corruption.

The Present Situation and the Challenges Ahead

iv. In spite of the difficulties facing procurement reforms in Africa, most countries managed recently to make substantial progress, with the support of the IFIs, in enacting modern procurement legislation and regulations. The majority of them established central regulatory and policy development agencies and some even prepared standardized bidding documents for use by procurement agencies. While most of the countries have already set in place legal and institutional frameworks and focus now on the next stage, i.e. implementation and monitoring (e. g. Tanzania, Nigeria, Uganda, Mozambique, Ghana, Senegal, Cameroon, Rwanda), other countries are just in the process of establishing their public procurement systems (e.g. DRC, Congo, Chad). Notwithstanding this progress the poor performance of the system and the lack of procurement managerial and technical capacity have deprived countries of the benefits of good procurement. Enacting modern legislation is a major accomplishment and a necessary step, but it is not sufficient because systems do not have the capacity to work as intended and are operating at low levels of efficiency and transparency. Behaviors have changed very little and weak controls and a culture of disregard for the law largely persist. Developing capacity and changing behavior defines the agenda for the future.

v. The prevailing institutional model for administration of procurement, promoted by the IFIs is one of a centralized regulation at the national level with decentralized procurement by the different agencies at the central or sub national level. Most countries also have a central regulatory body (normally under the ministry of finance) to oversee and support procurement operations. Control is under the responsibility of the supreme audit authority of the country. There are also important exclusions from the country procurement regulations in many countries. For example, many state owned enterprises, major public utilities, and project implementation units created at the behest of the IFIs, are exempt from the regulations. The amounts of public investment that are not subject to national regulations are significant. There has been also a major decentralization of procurement to the district and municipal levels. Most procurement institutions grossly under perform owing to the inherited crippling lack of managerial and technical skills that governments have not been able to resolve. This weak capacity increases with decentralization. Even though low capacity is a prevailing problem throughout the governments, procurement seems to be even weaker because of a mindset that sees it as an administrative task of secondary importance and not as a strategic function of the government to manage public expenditures and support government strategic goals. This mindset results in even less attention and resources allocated to enhance procurement capacity.

vi. Numerous management and performance issues affect the overall cost of procurement in the region. The lack of reliable information does not permit quantitative estimates of avoidable costs but there are indications that these are quite substantial. For example, in the Sub-Saharan region, agencies' procurement plans are not prepared in accordance with annual operating plans linked to multi-year corporate plans and to annual and multi-year budgets. The lack of coordination introduces substantive risks that contract funding may not be available. Moreover, there is no systematic verification of availability of funds for

new contracts; releases of cash are unpredictable and not linked to approvals for payment of invoices. The uncertainty increases the costs on the government side that has to resort to suboptimal procurement approaches (purchases as they go) and on the firms that need to factor the risks of unpredictable flow of funds

vii. Chronic delays in payments are one of the main factors that bidders need to factor in their proposals. . Delayed payments to suppliers increase the risk of bribery to expedite them which is a prevailing problem in the region. ,The practice of introducing criteria for evaluation of bids not disclosed in advance (prone to abuse and creating disincentives to prepare optimum proposals), the diversity of practices and documentation used for bidding across the government, and the ineffectiveness of the complaints mechanisms and the fear of retribution for requesting review create legal risks and discourage competition. The multiple layers of reviews and diversity of agencies' procedures demand substantive time from the already scarce human resources that is costly when aggregated across the entire government. As a result, the process of goods and services and the transaction costs are likely to be higher than otherwise.

viii. System integrity is a major issue in the Region. The irregularity of the audit reports and their limited scope and relevance render the process ineffective. The lack of capacity and skills to carry out adequate procurement audits uniformly characterizes the SAIs across the region. Their weak procurement knowledge, the quality of record keeping at the implementing agencies, and, in some cases, the political interference and lack of independence further cripples their effectiveness. Even though most countries have anti-corruption laws, and many have various anti-corruption agencies and bodies, their effectiveness and capacity are very low. In a lax control environment the opportunities for abuse are many. Another major contributor to the lack of integrity seems to be the low commitment to enforce the law at the high-level political. Neither is there a clear demand for it by the civil society and the private sector. Political capture of tender boards and the frequent conflicts of interest of their members exacerbate these integrity issues. It is likely that by focusing on stronger accountability and better system performance, abuse and corruption might start to abate.

ix. The main conclusion of this review is that even though there has been significant progress in creating the legal and institutional infrastructure for public procurement, the systems are underperforming because cultures and behaviors have not yet changed significantly. There is lax enforcement of the laws and those responsible for managing and administering procurement lack accountability for their actions or omissions Investing in making the systems work is likely to be more cost-effective than continuing to perfect the institutional or regulatory frameworks.

x. Another major conclusion of this review is that it is necessary to empower civil society to demand in a more determined and significant way good results and to hold public officials accountable for them. This is perhaps the one of the most effective tools to make a dent on the present lack of compliance and poor performance culture. To engage in government oversight civil society needs the right to do it, access to information, the organization and the skills to do so, and protection from retribution.

Addressing this topic is a colossal task. Unless reform-minded governments take the initiative to promote a more active civil society role from within, it is unlikely that significant improvements take place. IFIs can encourage and support governments by providing policy advice and by tying increased lending volumes to measurable and substantive progress in this area. The IFIs can also help by: a) developing appropriate strategies to promote more substantive involvement of the civil society in procurement oversight, b) supporting better access to information, and better organization of the CSOs, c) facilitating access to oversight training for those organizations, d) including them in their own procedures when country systems are not used, and e) requiring their involvement where formal institutions do not reach or do not function well.

xi. Access to information laws that grant these rights are weak in many countries in Sub-Saharan Africa. Substantive work remains in the field of promoting legislation that grants the public rights to information and the associated obligation by government officials to provide it in the terms established in the law. Moreover, there is a need to regulate record management appropriately and establish ways of enforcing the regulations. Otherwise, the freedom of information laws will not have any real effect in promoting transparency. The IFIs could start modeling the access to better information by requiring agencies to post information on IFI-financed procurement in friendly formats developed in consultation with the CSOs.

xii. Different circumstances have triggered reforms in the region thus far, including frustration of governments with the old systems that impede developmental efforts, need to rebuild countries after conflict, common market requirements and external pressure from aid donors. As said before, while these reforms have succeeded in assembling the systems' building blocks, they have not been effective enough in changing behaviors and improving performance of the systems. Reforms have been reactive rather than anticipatory after heavy social and economic costs for the countries. A fundamental lesson learned from these experiences confirms that reforms have to go beyond fixing the machinery to transforming the culture and behavior of all involved and more importantly of the policy makers. Another critical ingredient is the need for a strategic vision of the systems' expected results and role and the need to make sure the many different institutions, authorities, and levels of government share the goals and broad objectives of the reforms. A final lesson is that there is a need to create an enabling environment that involves all branches of government, civil society, and the private sector to ensure political support for transformative reforms.

The Task Ahead

xiii. The IFIs, particularly the World Bank and the AfDB, have played a catalytic role in promoting legal and institutional reforms in Sub-Saharan Africa. They could now use their influence as financiers of a significant share of public investment to help governments consolidate and further the reforms by focusing more decidedly on the systems' performance. The second-generation reforms are much more difficult because of their predominantly political and less technical nature. They need a greater

understanding of the root of the problems (not necessarily technical) and the reasons (political, economic or cultural) that encourage or drive present behaviors.

xiv. The diagnostic and evaluation tools for the second-generation reforms have to be more nuanced and conceptual than mechanical. Diagnostic work and improvement strategies need to consider country differences and specifics and take into account the political economy within which procurement operates in each country. Therefore, the format, the approach and the guidance for carrying out second-generation CPARs needs to change. The CPARs need to migrate from a technical fixes approach to an “issues and opportunities” paper with government policy makers as its main audiences. Private firms and civil society could be the next most important audiences. The CPARs need to offer policy makers strategic advice, sequencing of specific interventions and clear justifications with a sharp analysis of the priorities, likely degree of implementation difficulty (political, institutional and technical) and potential impact on the system. The new CPARs must focus on system performance and results including how to promote behavioral changes by the actors (government officials at all levels, politicians, private firms and civil society). There is also a need to develop performance indicators the address not only compliance with the norms but also results and outcomes. This might include for example developing baskets of products of standard specifications the prices of which can be readily compared across agencies and countries, score cards to collect hard data and perceptions of efficiency, competence and integrity of different agencies, and surveys and analyses to find out about premiums added by firms for doing business with the government to cover unreasonable risks.

xv. The issues hindering better performance of the procurement systems involve matters of overall governance culture, changes of behavior by the participants in the process and changing the mindset of the politicians and country leaders. Working on the results and on the demand side for good procurement needs fresh thinking, skills and approaches different from those for working on the input side (regulation, institutions, etc.). Affecting these matters and generating momentum transcend the procurement field and therefore future work might need to be framed within wider state modernization programs. The complexity of the second generation reforms is enormous and linking them to broader strategic state reforms might enhance their chance of succeeding as they are no longer a matter to be handled merely by the procurement community but need the input of other professions (e.g. public sector reform, civil society and political science specialists).

xvi. There are still activities on the input side that are likely to have significant impact in the **short-term**. For example standardization of documentation and practices within and across countries has a high priority as a way of increasing predictability and trust in the system, as well as reducing legal risks and transaction costs for the government and for the private sector. This would also facilitate trade integration amongst countries, as has been the case for the emerging common markets in Francophone Africa. Consistent and permanent dissemination of the regulations and use of tools for procurement staff and private sector firms and preparation and dissemination of working tools including manuals, standard bidding documents, and establishment of help desks in the regulatory

agencies would assist much the public sector procurement officials and private firms interested in doing business with the government and would reduce overall transaction costs

xvii. Publishing information on contracts financed by the IFIs in friendly formats agreed with CSOs; developing basic information systems that allow monitoring of system performance and better management and improving dispute resolution and review procedures at the pre- contractual and contractual stages would help participants gain trust in the procurement process. Today the dispute resolution bodies are seen as lacking independence, and there is little clarity about rights, procedure, and options. There is also generalized fear by firms to complain about irregularities because of possible retribution in the form of “de facto” black listing in countries where their main potential client is the government. The lack of adequate alternative dispute resolution (ADR) arrangements and guarantees is a major source of legal risk and abuse in countries where the courts have a reputation of being slow, bureaucratic and not independent.

xviii. There are major obstacles to improved performance, which could be ameliorated by **medium-term**. For example integrating of procurement planning and operations with other government systems, particularly with budget and financial management developing and supporting strategies to invest in managerial, institutional, and human capacity.. Adjusting the pace of decentralization of procurement to the development of local capacity. Enforcing better management of information and records for monitoring and control; development of a number of key controls and strengthening of internal and external audit requirements (and responses to them); Supporting and encouraging civil society and business to demand accountability and support decentralization; Continue developing gradually e-GP moving from merely provision of business opportunities and outcomes to more transactional capabilities as Internet connectivity improves in the countries.

In the **long-term** there is a need to seek and supporting a clear commitment and leadership to demand good performance and to align procurement performance with the strategic goals of the government and to develop a culture of performance and compliance. As said before, a strong driver would be encouraging civil society to press for accountability from the outside, while increasing accountability inside government as well by promoting clear incentives to induce behavioral changes of all participants in.

xix. The IFIs in their turn need to prepare the ground for the second generation CPARs. Areas where fresh work is needed include: redeveloping guidelines for the second generation of CPARs or “Issues and Opportunities Papers” as tailor made papers that are more strategic and with a much stronger emphasis on system performance. Those should be supplemented by the development of relevant performance and output indicators and by devising strategies to support CSOs in their role as parties overseeing public spending. Analytical work is also necessary to find out the cost of doing business with the government and ways of reducing or eliminating unnecessary transactional and risk costs. Integrating procurement reforms in a broader context of public sector ones is

also an approach that the IFIs need to be intensify to promote integration of procurement with other government functions.

xx. In summary, based on this review, it could be concluded that if Sub-Saharan countries want to reap the benefits of the accomplishments thus far, they need now to focus strongly on improving by a quantum leap the performance of their procurement systems. IFIs can support this process by helping develop country specific strategies that include stakeholder analyses; development of performance indicators; clear, realistic objectives; and incentives to encourage changes to behaviors and cultures (both rewards and punishments). Developing institutional, operational and human technical capacity is a longer-term investment that could be phased. The first phase is a ramping up effort to create the conditions to attract and hold good procurement managers and officers while also improving procurement literacy at all levels. The second is a maintenance phase, once the supply of trained officers, institutions, knowledge, and operational effectiveness reach a steady state of acceptable performance. Strengthening the oversight role of civil society is necessary to put politicians and government agencies on notice that if they want to stay relevant they need to deliver as promised. However, freedom of information legislation adequately backed up with regulations on records management and friendly government reports to society are prerequisites, and protection for whistleblowers is essential.

I. The Sub-Saharan Africa Region

1. The Sub-Saharan Africa Region comprises forty-seven countries that, in spite of progress made in recent years, face huge challenges for furthering economic growth and poverty reduction. Nearly one out of two Africans (mostly women) lives on the equivalent of US\$1 a day. Desertification and water shortages affect much of the region and Africa has the highest prevalence of HIV/AIDS. About 40 percent of Africa's population lives in landlocked countries and the continent has the highest density of countries of any developing region. After colonial departure in the 1960s, many countries inherited arbitrary boundaries that divided communities and that the colonial powers drew with no regard to the new countries' economic or sustainability considerations. Subsequently, many of them had a weak economic foundation. The government apparatus left behind was institutionally, technically and economically weak and generally with civil societies disengaged from the state affairs.⁶

2. Totalitarian governments dominated the political scene immediately after independence until the early 1990s in which internal conflicts and military interventions (civil wars and ideological proxy wars between world powers during the cold war) drained the little capacity left by the colonial powers. During that period, governments centralized power, excluded participation by the civil society in state matters, weakened or co-opted the already weak control systems in the judiciary, and played a central role in the economy. The lack of checks and balances for decades generated a culture of indifference and tolerance for infringement of the law, and created a fertile ground for corruption. There are still remnants of that culture that affect much of government practices today. The oil and economic crises of the 1990s precipitated major changes in the political landscape of Africa with the advent of multi-party elections and democratically elected governments, and more active involvement of society in state affairs. However, Africa still faces a formidable capacity deficit to manage state functioning efficiently and transparently.

3. In spite of the issues facing the continent, Africa has managed to make gradual progress in many areas. Education is more accessible and there have been significant advances in preventing disease and controlling desertification, to name only a few areas. The past decade has witnessed growing diversity in income levels and growth across Africa⁷. Sixteen countries grew by more than 4.5 percent a year over this period, and several of them (including Ghana, Mozambique, Senegal, Tanzania and Uganda) also diversified their economies and exports. The fastest-growing group of non-oil-producing African countries, which together represent 36 percent of the population in Africa, grew at an average rate of 5.5 percent. In contrast, the 13 slowest-growing countries, which represent 20 percent of the region's population, saw average growth of only 1.3 percent. Growth for the region as a whole reached an estimated 5.3 percent in 2006.

⁶ An Introduction to Africa's politics – Alex Thomson – Rutledge - Second Edition - 2004

⁷ Data in this and the following paragraph are from the World Bank – World Development Report - 2007

4. Solid growth has helped to improve human development outcomes, especially in primary education. Gross primary school enrollment rates in the region rose from 72 percent in 1991 to 96 percent in 2004. Health outcomes are more varied, but they, too, are improving in many countries, and progress in preventing and treating malaria and HIV/AIDS has accelerated. Despite these positive signs, Africa is not growing rapidly enough to reduce poverty substantially. The World Bank estimates that Africa's economies should grow at 7 percent per year as a minimum to have a significant impact on poverty reduction. The International Financing Institutions (IFIs), and international NGOs have been increasingly focusing on Africa by providing policy advice and substantial financing. In some countries like Uganda, IFIs finance about half of the annual government investment program.

5. Facing these challenges, it is imperative that Africa strives to improve the efficiency and quality of its public expenditures. Public procurement, the subject of this report, is one of the areas where substantial gains can be achieved at relatively low cost.

II. The Changing Nature of Public Procurement and the Sub-Saharan Africa Legacy

6. This section outlines the modern conception of public procurement in the international arena, the drivers leading to the recent evolution of the public procurement function, and the legacy that the Sub-Saharan systems are facing for reform.

A. A Fast Changing Function

7. Public procurement is one of the fastest changing government functions in the OECD and many developing countries. Over the past 15 years, procurement has moved from being an administrative function to becoming a strategic responsibility of the state that plays a critical role in fiscal resources management, quality of governance, promotion of economic development and commercial integration. The modern concept of procurement is that of a strategic government function essential to good government performance and to achievement of the country's economic and social goals an integral part of fiscal resource management. This is because appropriate budgeting and professional procurement are crucial to responsible and transparent administration of public funds. Procurement has shifted from being a mere processing task to a management- and knowledge-based activity that supports good governance and enhanced accountability. The function encompasses the entire process from determination of needs to asset management and disposal. Often procurement policies are as a tool to promote a wide range of government objectives including environmental protection, minorities or regional benefits, or country economic development objectives.

8. This evolution has affected the procurement profession deeply. At the operational level, procurement officers are no longer the administrators of an activity requiring the mere knowledge and application of rules; instead, they now increasingly need to be managers of a process requiring a vast array of skills guided by ethical and accountability principles. A well-trained contract or logistics manager whose job is not only to apply the rules but also to operate efficiently within a sophisticated market of ever-increasing commercial and technological complexity is gradually replacing the old empiric procurement bureaucrat. At the policy level, decision makers are more aware of the potential impact that government procurement has on efficient use of resources and service delivery, on providing legitimacy and credibility to the government, and on supporting economic and social government goals. However, the pace and progress of this evolution has been uneven in different parts of the world. In almost all Sub-Saharan African economies, there have been improvements but the old concept of procurement as a process function prevails. Moreover, procurement has not been integrated and aligned with the strategic vision and objectives of the government, thus becoming often an obstacle, instead of a support, in meeting those objectives.

B. The Drivers of Change

9. Important international developments in the early 1990s triggered this change in perspective. Some of these events forced many governments to focus on procurement as they sought to adapt national systems to international trade agreements and to new business concerns. Moreover, the rising concern of civil society with corruption and the increased demand for accountability and results in many parts of the world put politicians on notice of the importance of procurement as a strategic government function and as a source of legitimacy by holding government officials accountable for their actions and results. Watershed events during this period that served as important drivers in reforming procurement around the world were:

- The creation of the European Union (EU) put procurement at the center stage of the negotiations as one of the key issues to address. The multiplicity of national procurement systems loomed as an impediment to free trade and forced governments to focus on aligning their national systems. In the early 1990s, the European Commission issued a green paper on public purchasing to open the discussion on procurement with the private sector, the contracting bodies, and other stakeholders.⁸ The result was a need for system simplification, modernization and flexibility that culminated in the procurement directives adopted in March 2004.
- The General Agreement on Tariffs and Trade (GATT) and the Uruguay Round culminated with the signature in April 1994 of the Government Procurement Agreement (GPA) and the creation of the World Trade Organization in 1995. The GPA introduced a multilateral framework regarding government procurement with a view to achieving greater liberalization and expansion of world trade.
- In 1994, UNCITRAL published the Model Law on Procurement of Goods, Construction and Services. This was “in response to the fact that in a number of countries the existing legislation governing procurement is inadequate and outdated”⁹ resulting in inefficiency and ineffectiveness in the procurement process, patterns of abuse, and the failure of governments to obtain value for money in the use of public funds.
- The creation of Transparency International in 1993 and its early work on corruption attracted substantial public interest and raised awareness and concerns about the devastating effects of corruption in public procurement.
- With the advent of the national chapters of Transparency International, many other CSOs interested in procurement proliferated in many countries. The role of civil society in overseeing good procurement has increased considerably particularly in Asia and Latin America in the last ten years promoting changes. Recently many governments are encouraging and promoting civil society

⁸ The New EU Public Procurement Directives – Ruth Nielsen, Steen Treumer –Djof Publishing, Denmark 2005.

⁹ UNCITRAL – Model Law on Procurement of Goods, Construction and Services, with Guide to Enactment – United Nations, New York, 1999

involvement in oversight of government activities, particularly procurement. This contrasts with the prevailing attitude until the late 1980s when many governments considered organized social interventions as opposition to the government and, at times, almost subversive. There have been important changes in most countries including legal reforms enabling civil society participation and laws granting public access to information.

- In 1996, the then-President of the World Bank Group, in his speech at the World Bank-IMF annual meetings, publicly denounced the “cancer of corruption” as one of the major obstacles hindering economic development. This opened an intense international debate and public interest in the topic and triggered the formulation of the first World Bank strategy to engage actively in combating corruption.¹⁰ Procurement was one of the critical activities to consider because of its vulnerability to corruption. Shortly after other international development institutions established their own anticorruption initiatives and late 1998, US President Clinton signed into law the International Anti-Bribery and Fair Competition Act of 1998.
- Consistent with the events of the times, the international development community shifted the focus of procurement due diligence from supervising borrower compliance with the procurement policies and procedures of development institutions to one of systemic analysis, risk assessment and policy advice on how to improve national procurement and financial management systems.
- The technological impetus beginning in the early 1990s made available new tools for electronic procurement that revolutionized the way governments could do business. These technologies made it possible to minimize or eliminate the interaction between procurement officials and bidders, reducing the opportunity for collusive practices. The new technology permitted more efficient procurement methods (such as reverse auctions and catalog purchasing under framework contracts¹¹), wider competition as well as the possibility of better monitoring of procurement and more informed planning. All this affected the nature of the function deeply.
- In 2006, the Organization for Economic Cooperation and Development (OECD) started work on producing a standardized diagnostic tool to assess public procurement systems and their performance.¹² The long-term objective is that this tool will gradually evolve into an internationally accepted set of standards for good procurement that governments can use for benchmarking and monitoring the evolution of their own systems.

¹⁰ Helping Countries Combat Corruption: The Role of the World Bank. - World Bank, September 1997.

¹¹ Terminology for new approaches to procurement is not fully settled. An *electronic reverse auction* is an online, real-time dynamic auction between a buying organization and a number of suppliers who compete against each other to win the contract by submitting successively lower-priced or better-ranked bids during a scheduled period. A *Framework Agreement* between one or more contracting agencies and one or more suppliers or vendors, the purpose of which is establishing the terms governing contracts to be awarded during a given period, in particular with regard to prices and the quantities envisaged.

¹² OECD – Methodology for Assessment of National Procurement Systems (Based on Indicators from OECD-DAC/World Bank Round Table) – Version 4, July 17, 2006.

10. These events converged to produce a flurry of international activity in the procurement arena to which Africa was not immune. In June of 1998, the assembly of African Heads of State and Government in Ouagadougou, Burkina Faso decided to convene a high-level meeting of experts to consider ways of removing obstacles to the enjoyment of economic, social and cultural rights – such as through the fight against corruption and impunity – and propose appropriate legislative and other measures for reform. The result was the expert meetings in Addis Ababa in November 2001 and September 2002 that drafted a historic agreement in which civil society groups, including Transparency International, participated. Throughout the drafting process, these groups pressed for the inclusion of provisions on asset recovery, political party financing, access to information, and whistleblower protection.¹³ The AU adopted the paper in July of 2003 at its summit meeting in Maputo, Mozambique. Thus far, out of 53 African countries, 41 countries have signed the convention and 26 have ratified it.¹⁴ Adherence to the convention is relevant to public procurement because corruption in this sector is a critical element affecting the effectiveness of public spending. In addition, 25 Sub-Saharan African countries have signed the United Nations Convention Against Corruption and 27 have ratified it or are in the process of doing so. The Convention commits countries to, inter alia, a broad range of actions to prevent, criminalize and prosecute corruption.¹⁵

11. All these events converged with the debt and oil crises of the 1990s which prompted a sharp economic downturn in Sub-Saharan Africa. The International Financing Institutions (IFIs), particularly the World Bank and the IMF, became the leading lenders with much policy advice and influence in the countries. This period saw a return to the multiparty system. Pressure from civil society, the media and political parties quickly pushed corruption and governance issues to the fore. The IFIs adopted an agenda of promoting strong good governance, including in public procurement; civil society's role expanded and multi-party political systems flourished.

C. The Procurement Legacy in Sub-Saharan Africa

12. During the colonial era ending in the early 1960s, the procurement function was purely administrative and mostly limited to keeping supplies flowing for the operation of the colonial administrations, and for the exploitation of natural resources in the colonies and the associated infrastructure. Moreover, colonizing countries were mostly the sole suppliers to their colonies with limited or no competition from other countries. Colonizers' staff managed procurement while Africans in the bureaucracy held clerical positions in charge of administrative processes. Operations generally followed the rules of the metropolis and procurement was viewed as a purely supply function rather than as part of public policy implementation. The

¹³ "An introduction to the African Union Convention Against Corruption", Akere Muna, Global Corruption Report 2004 - Transparency International.

¹⁴ <http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Convention%20on%20Combating%20Corruption.pdf>

¹⁵ For a full text of the Convention see <http://www.unodc.org/unodc/en/treaties/CAC/index.html#textofthe>

extensive use of colonial procurement agents (e.g. Crown Agents in the Anglophone countries) deprived local staff from the learning-by-doing opportunities. Thus the little capacity left behind by the colonizers was administrative rather than managerial or strategic.

13. At the end of the colonial rule, the colonizers promoted the “Africanization” of the civil service by giving more responsibilities to an emergent bureaucratic class. Colonizers carried out this process with no substantive transfer of technical or managerial capacity to run the supply system. The subsequent centralization of the state and postcolonial personal rule that dominated Sub-Saharan Africa resulted in a general disregard for controls including the taking over or capture of the judiciary and legislature by the leaders of the time. Checks and balances were weak or non-existent, and the multi-party system and civil society involvement deteriorated over this period. Members of Parliaments were more concerned with channeling resources to their constituencies than with the formulation of statewide legislation and local government changed for local administration reporting to the center. Local communities lost the power to influence central policies or decisions and many civil society institutions that could have played an important role disappeared under centralized and personal rule.¹⁶ Unfortunately, there are still vestiges of the old vices and abuses, both in government and in the private sector in the form of entrenched interests that benefit from the lack of control and accountability and that resist change.

14. These events resulted in a chronic lack of capacity for managing and overseeing procurement and in the lack of a compliance culture. These factors crippled the procurement function in most countries. Procurement units and tender boards scattered throughout ministries and decentralized government agencies worked in isolation with responsibilities limited to the processing of purchase orders or administering evaluation of bids. They delivered contract award recommendations for decision by senior officials normally at the highest levels of government who often decided not to follow the recommendations. The procurement units were and still are understaffed or staffed with officers who had no formal education on the subject. Thus, governments generally continue to conceive the function as a back room activity, disconnected from other systems in the government, such as financial and budget management, which receives little or episodic attention triggered only by procurement scandals or mishaps or when IFIs press for improvements.

15. The public has a poor perception of the procurement function that undermines the credibility and legitimacy of the government. Most CPARs report high levels of public mistrust and of perception of procurement as a highly inefficient and corrupt function. For example, the Tanzania CPAR estimated that about twenty percent of the total public procurement is lost through corruption kickbacks and bogus investments.¹⁷ There are examples of lack of transparency, frequent corruption scandals, substandard quality of products or works, and theft of goods while in care of customs or government stores (Box 1). These perceptions resulted in cynicism and

¹⁶ Introduction to African Politics – Alex Thomson – Second Edition – Routledge 2004

¹⁷ Tanzania – Country Procurement Assessment Report – April 30, 2003 - The World Bank.

indifference by the civil society. For example, in Uganda, in spite of the progress made in reforming the regulations and structure of the system, CSOs have become disillusioned and apathetic because of lack of action on reported suspected corruption by the authorities.¹⁸ The lack of action on scandals and corruption events that often catch the interest of the media and public opinion erodes public trust in the government's declared commitments to fight corruption and weakens support for the reforms.

Box 1- Corruption in Procurement in Sub-Saharan Africa

The following quotations from the CPARs reflect public perception of procurement:

Ghana: Government and the civil society have on-going initiatives to fight corruption but these have not achieved tangible impact, as corruption is still endemic. The TI rating for Ghana is 3.7, which is relatively better than most African countries. This does not really auger with local perceptions that there is endemic corruption that mars the relationship between the government and civil society.

Malawi: It is generally recognized that corruption is widespread within the public procurement sector in Malawi. A contributing factor is the weak public sector managerial accountability, which is partly due to the opportunities created by monopoly of power and wide discretionary powers that some civil servants enjoy.

Uganda: The CPAR mission was informed about several examples of corrupt practice in public procurement and disposal, including facilitation payments, bribery of evaluation and tender board members, favoritism and conflict of interest especially in the form of biased evaluations, and exclusions based on improper reasons. Surveys conducted by the Inspector General of Government (IGG) describe corruption as being endemic in Uganda.

Kenya: The shortcomings of the procurement system reflect a legacy of mismanagement and a pervasive culture of corruption in public procurement that will take time to remedy, as the Independent Procurement Review (IPR), completed in September 2005, makes clear. The passage of the new procurement law marks a significant turning point in this transition

16. In summary, public procurement reformers in Sub-Saharan Africa face a legacy of: a) weak managerial and technical capacity to lead the system strategically; b) a conception at all levels of the function as an administrative task rather than a support for policy implementation and for attainment of the developmental goals of the country; c) a lack of integration of the function into other key systems in government, most significantly budget and financial management; d) weak political commitment to enforce the law; e) a lack of a culture of compliance and much disregard for appropriate controls; f) an indifferent and disillusioned civil society uninterested, sometimes out of frustration, in overseeing the integrity of operations or in demanding increased government accountability for results; and g) possible resistance to change from stakeholders that benefit from the present status quo.

¹⁸ Interviews with procurement experts at the World Bank.

17. This legacy is a formidable challenge facing the furthering of procurement reforms in the Region. Reforms, to be successful, must be transformative of the present culture of indifference for compliance and lack of demand from the civil society for good procurement. The transformation should aim to set off an essential cultural change in the thinking of politicians, policy makers, procurement managers, officers and civil society. The shift needs to be from considering procurement as a source of rent for operators to a highly efficient service to society. IFIs have been successful thus far in pressing for regulatory and institutional reforms as discussed later. Governments have also been responsive to implement these changes when sufficient pressure is exerted on politicians. However, a transformation of the mindset of this nature is a much more difficult and challenging task where IFIs might have less leverage, except if they focus more on working on the demand side of this equation, the civil society.

18. Furthering the reforms of public procurement requires the formulation of a set of explicit strategic and performance objectives as well the corresponding tools for monitoring performance that have not been developed thus far. This would also comprise formulating managerial and result standards to be met, and promoting a culture within the government to enforce the law. There must be associated rewards for success and penalties for failure as incentives to change behaviors and encourage achievement of results within the existing regulations. Fixing the regulatory framework or the institutions is necessary but has not been sufficient to obtain satisfactory performance of public procurement in the Region. Even imperfect regulations may produce good results if there is a culture of good performance. For example, in Chile, (one of the best performing systems in Latin America), the government committed to make a less than perfect regulatory system work. The Chilean government took advantage of the initial successes to push subsequently for more substantive reforms as they built on the political support gained through improved performance. In Rwanda, after the tragic 1994 events the government was able to perform reasonably well with simple procurement guidelines based on a commitment to performance as illustrated in Box 2.

19.

Box 2 – Good Performance within no Perfect Rules

Rwanda implemented a procurement law in March of 2007. However, since 1997, it has managed to perform reasonably well without a recognized legal framework underpinning its public procurement system. This was possible thanks to pragmatism, political will, and commitment to good governance. From 1994 to 1997, public procurement was de facto unregulated and became very disorganized. The Government soon realized that, if it were to benefit from the external assistance committed to the country for the purpose of reconstruction and human development, public procurement had to be brought to order. The government created and adequately funded a National Tender Board (NTB) which after some time became a rather well regarded and relatively efficient body that was able to gain control over procurement activities. NTB, thanks to the political and financial support recruited by the government, trained and retained a core group of competent procurement officers.

The NTB brought about good practice in public procurement by adopting procurement rules modeled after the Procurement Rules and/or Guidelines of the Multilateral Development Banks, including the World Bank and African Development Bank. The rules were applicable to procurement by Ministries, Public Institutions, State-Owned Enterprises and externally funded government projects. The satisfactory performance during those years secured further external funding to the country as well as international and internal political support for subsequent reforms.

III - Findings from the Country Procurement Assessment Reports

20. This section sets out the main findings of the review of the Country Procurement Assessment Reports (CPAR). As previously mentioned, the OECD has developed, and is currently testing, a Benchmarking and Assessment Methodology for Public Procurement Systems. Under the OECD framework, base-line indicators seek to benchmark procurement systems against international standards along four dimensions. Given that this tool provides an increasingly widely recognized framework, the presentation of the findings from this review is closely aligned with these four dimensions as follows: (i) the legal and regulatory framework; (ii) the institutional architecture; (iii) operations management; and (iv) independent oversight.

21. At the end of each one of the sections listed above there is a table that summarizes the main issues that according to the CPARs reviewed for the study still need to be addressed in each of the countries in the sample. The authors attempted also to assign a score from 1 to 3 based on their perceived degree of the severity with which a particular issue is likely to influence the proper functioning of the system. Things may have changed in the interim, and therefore the ratings are the authors' views of where things stood in a comparative framework at the time of the CPAR..

A. The Regulatory Framework

22. *Sub-Saharan Africa has a Modern Procurement Legal Infrastructure.* Most Sub-Saharan countries enacted procurement laws and regulations in the last 10 years under the auspices and with the advice of IFIs¹⁹. Anglophone countries in the Region developed their laws mostly following legal models like the UNCITRAL model law that reflect modern procurement practice. Francophone countries adopted a “public procurement code” after independence in the 1960s. These followed the Napoleonic and civil law traditions for public procurement. Moreover public contracts are governed by administrative law principles, which supersede general contract law. Procurement codes and their implementing rules were subsequently amended on several occasions or reformed, on the basis of laws from other countries (mainly France and EU Directives), Multilateral Banks policies, and some provisions from the UNCITRAL Model Law.²⁰ Because of relatively recent development of or amendments to, the laws, high-level regulations in the Region are overall more advanced and up-to-date than in other developing countries. The basic legal infrastructure is essentially in place in most countries. For example, Ghana, Malawi,

¹⁹ One notable exception is the Central African Republic, which has obsolete legislation but is in the process of drafting a new procurement code.

²⁰ In Member countries of the Union Economique et Monétaire Ouest Africaine (UEMOA), the process of reform must now be harmonized with directives issued by this Economic Organisation, in a way similar to the process adopted in European Union.

Rwanda and Uganda have solid, albeit not perfect, sets of procurement laws and regulations, manuals and standard bidding documents that could become the basis for good procurement performance. In this respect Africa has made considerable progress. What is required going forward in most countries is essentially fine tuning of the regulatory system; the hard regulatory work has been done.

23. *Not all are Created Equal – The Exceptions to the Rules.* Modern legislation leads to better efficiency to the extent that it is complied with and that it covers the bulk of publicly financed expenditures. However, there are many exclusions to the application of the newly enacted laws and the excluded agencies still have outdated and opaque rules in many cases. Not only does the diversity of regimes increase the costs for all the participants, but it also makes the system more vulnerable to abuse. There is little information in the CPARs about the amount of procurement excluded from the existing laws but there are some indications that it may be significant. For example according to the Burundi CPAR, national procurement regulations cover only 20% of the public contracts. There are loopholes allowing circumvention of the rules: a) state-owned or state-controlled enterprises are excluded from the legislation; b) fractioning of contracts to keep them below the thresholds for application of the rules; c) procurement carried out by implementing agencies acting on behalf of the contracting authority but under different rules; and d) procurement carried out by concessionaires of public services. While there might be efficiency reasons for some of the exclusions, often they are abused. The CPARs do not include a critical analysis of the quality of procurement in these cases or any quantification of the volumes of the exclusions. This is an area that requires a more careful analysis by the governments and by the IFIs of the justification for these exclusions and of the associated costs and benefits.

24. Two situations normally justify exclusions from the procurement regulations. One is in procurement of goods or services the disclosure of which could endanger national security or state vital secrets. The other is when state owned enterprises compete in the open market for a profit with the private sector. In the latter case the agencies should operate under the commercial law and should be financially autonomous and thus not receive government subsidies or special privileges when competing. State-owned enterprises thus are generally subject to rules that would be more expeditious and subject to fewer layers of approvals. However, the Central African Republic CPAR reports that in some cases, excluded agencies do not even apply their own rules or adapt their rules to freely determine their own thresholds for applying different procurement methods. The Togolese government, in the context of a policy anticipating the privatization of state enterprises, decided that public institutions active particularly in the area of water, energy, and transport would not be subject to the provisions of the public procurement code, (as well as companies working in the national defence and security sector). This decision seems to be derived from by the principles set by the EU Commission, where compulsory procurement rules do not apply to state owned enterprises operating in economic sectors where competition is effective, (as is the case for the telecoms sector), and provided that those enterprises are not subsidized. Most African countries do not meet these conditions in sectors that invest enormous amounts of public funds. A similar

situation occurs with private enterprises financed with public funds or supported by government guarantees contracts.

25. Special units, many created at the behest of the IFIs to implement externally funded projects subject to IFI procurement rules, are often the vehicle to implement domestically financed contracts. Many of these units exist even though they have outlasted the initial purpose. In using these units to avoid procurement rules, public authorities are sacrificing transparency for expediency, often without good justification. Even though procurement codes already include a provision whereby the procuring agent acting on behalf of public entities should follow public procurement rules, this practice has been widespread in many countries, including in Burkina Faso, Mali and Senegal. There is a need for a critical review to establish whether state-owned enterprises and similar organizations have procedures and practices that are sufficiently transparent and efficient or whether they should be subject to the existing country regulations.

26. *Building on the Good Legal Base, a Case for Standardization.* Many Anglophone countries have developed standardized bidding documents, but much work remains to be done on the Francophone countries. The development of standardized processes and bidding documents is essential to enhance the predictability of the system and diminish legal risks in places where other institutions such as courts and dispute resolution venues do not work efficiently or transparently. Standardization reduces substantially the transaction costs by reducing the time spent by each institution in producing its own documents for each new procurement, as is the case today. Standardization also helps to create case law that over time enhances system stability with the associated predictability. When aggregated across all government agencies, the costs to the government and to the business community of managing and mastering individual bidding documentation created by each government agency for each procurement is significant.

27. The multiplicity of procurement regimes and the diversity of detailed documentation and procedural rules at agency level results in fragmented or reduced competition because suppliers tend to specialize in bidding for contracts with only a few government agencies. The lack of procurement manuals to guide the application of the law and use of the standard bidding documents exacerbates this problem as different officers use may come up with different interpretations. The private sector also suffers from the lack of standardization of documents and practices because the costs of preparing tenders to meet the plethora of requirements by the different agencies are unnecessarily high. There are examples outside of Africa that experience similar situations, like in Costa Rica, where contractors indicated that it is easier for them to specialize in bidding for work at a select few agencies, the rules of which they know well. This tends to create a “club mentality” and can lead to collusion and other abuses. Contractors and consultants interviewed in Chile during a procurement assessment indicated that bidding for government contracts is at least twice as expensive as bidding for similar projects in the private sector because of the greater number of government requirements and time involved.

28. Proliferation of different procedures and practices at the agency level is also a formidable barrier to the advancement of international good practices based on access

and equal treatment. It also complicates negotiation of Free Trade Agreements (FTAs) where procurement harmonization is always an important item on the agenda. The Region can take advantage of the relatively harmonized legislation in most Anglophone countries, which have adopted the UNCITRAL model and in the Francophone countries, under the two existing regional agreements, the Union Economique et Monétaire Ouest Africaine (UEMOA)²¹ and the Economic and Monetary Community of Central Africa Communauté Economique et Monétaire d’Afrique Centrale (CEMAC),²². Countries in the Region should seek to consolidate these achievements by standardizing procedures, practices and documentation internally at the agency and sub national levels.

29. Table 3.1 shows a summary of the main outstanding regulatory issues across the Region. The table shows that there are pockets of deficiencies that need to be tackled, but most countries seem to have largely addressed the fundamentals of the regulatory system.

²¹ **UEMOA**, which was established by the treaty of 10 January 1994 currently comprises: Benin, Burkina Faso, Côte d’Ivoire, Guinea Bissau (since May 1997), Mali, Niger, Senegal and Togo. It replaced the West African Monetary Union (UMOA) created in 1962 by six West African States, and the Economic Community of Western Africa (CEAO), established in 1973, which itself replaced the Customs Union of Western African States (UDEAO), created in 1959.

²² **CEMAC**, created by the treaty of 16 March 1994, which came into force in June 1999 comprises six Central African states: Cameroon, Central African Republic, Congo, Gabon, Equatorial Guinea (which joined UDEAC in 1985) and Chad. It replaced the Monetary Union (BEAC) and the Central African Customs and Economic Union (UDEAC) that existed since 1964.

Table 3-1 – Main Regulatory Issues and Relative Severity

A- Anglophone Countries

ISSUES REPORTED IN THE CPAR	COUNTRIES AND SEVERITY OF ISSUES												
	Cape Verde	The Gambia	Ghana	Kenya	Lesotho	Malawi	Mozambique	Nigeria	Nigeria- Lagos State	Rwanda	Sierra Leone	Tanzania	Uganda
Poor quality of regulatory system (vague, voids, overlaps, outdated)	3	1	1	1		2	1		3	2	1	2	1
Lack of or weak detailed regulations			2	1	2		2				1		
Uncoordinated regulations by various agencies	3	1	2		2				3				
Lack of Procurement Manuals and instructions	3	1			3	3			3				
No standard bidding documents	3	3	1	1	3	1	1	1	3	3	1	1	1

B - Francophone Countries

ISSUES REPORTED IN THE CPAR	COUNTRIES AND SEVERITY OF ISSUES										
	Burkina Faso	Burundi	Cameroon	Central African Republic	Chad	Côte d'Ivoire	Democratic Rep Congo	Mali	Niger	Togo	
Poor quality of regulatory system (vague, voids, overlaps, outdated)	2	3	1	3	2	1	3	2	2	3	
Lack of Procurement Manuals and instructions	2	3	2		3	3	3	2	3	3	
No standard bidding documents	1	3	2		3		3	2	3	3	

Note: The severity of the issue has been scored as follows: **3:** High; **2:** Medium; **1:** Low or nil; Blank space : Nothing reported.- The scores reflect the authors' relative assessment based on the NARRATIVE diagnosis presented in the CPARS. However, the CPARS do not quantify it.

B. The Institutions

30. Table 3.2 shows the incidence and severity of institutional issues mostly related to a lack of technical and managerial capacity and of professional development programs. As the subsequent discussion shows, institutions have been created throughout the Sub-Saharan Africa to take care of specific procurement duties, but a capacity shortage impedes them to play their role as expected.

31. *The Institutional Model.* The prevailing institutional model for administration of procurement, promoted by the IFIs, is one of centralized regulation at the national level with decentralized procurement by the different agencies at the central or sub-national levels under the responsibility of agency or district tender boards. There may be also sub-national regulations, but the CPARs do not discuss the precedence or the degree of alignment among the different systems. The standard model includes a permanent administrative authority (usually the Ministry of Finance) that coordinates procurement and a central independent regulatory agency responsible for monitoring procurement operations, formulating policies, and issuing instruments for application of the regulations such as instructions, manuals, model or standard bidding documents and for knowledge dissemination, and training of procurement officers. The Supreme Audit Institution (SAI) is responsible for auditing, but the SAI typically does not have the technical capacity to carry out procurement of audits, so it delegates this function to the regulatory agency.

32. Thus far, most of the central regulatory agencies are struggling to establish their role but they generally lack the technical and budgetary resources, and the political influence necessary to make a meaningful impact on system performance. The shortage of resources manifests itself in ignorance of regulations and instruments by the procurement officers throughout the system, which is particularly severe at the sub-national level. The technical skills of board members are generally weak, as many of them do not have the minimal procurement knowledge required to apply the regulations. To mitigate partly the risk of poor decisions, the small technical staff of the central agencies has been devoted to prior review of procurement processes or to audit tasks delegated by the government audit office. There is a need to break this vicious circle, for example by temporarily outsourcing an intense crash effort of dissemination of norms and training of board members and bidders in their application. At the same time, there should be a major strengthening of the central regulatory agencies' capacity. Otherwise these will face an ever growing demand for their prior review (stemming from the lack of skill of the tender boards), with no or very limited improvement of system performance.

33. Quite often governments have given the central regulatory agencies functions that include operational obligations (e.g. prior review of procurement processes) that they have to subsequently audit. These arrangements compromise the independence of the regulatory bodies. For example in Togo, the National Procurement Commission is apparently also in charge of the opening of the bids. In Niger, the regulatory agency in charge of public procurement, Agence de Régulation des

Marchés Publics, plays a role in enforcing the implementation of the regulation as well as in the process of awarding contract. Its regulatory functions include: a) the definition of public procurement policies; b) training in the public procurement sector; c) the maintenance of the public procurement's information system; and d) the performance of ex post controls and audits. This is why UEMOA's Directive No. 5 requires the separation of controlling functions that have to be exercised by an administrative body and regulatory functions to be vested in an independent body. To implement this directive, the member States committed themselves to establish institutions independent from the controlling authorities having equal representation of the administration, the private sector, and civil society.

34. *The Capacity Deficit.* The procurement function in the Sub-Saharan region has weak human, organizational and institutional capacity. Public procurement requires well-trained professional managers of procurement operations that are capable of working in complex and sophisticated business environments. The shortage of skilled procurement professionals at the managerial and operational levels are a major hindrance to good procurement operations in the region. Changes in administration and other political interventions result in frequent turnover of staff, particularly in managerial positions, and exacerbate this problem. Procurement activities are not isolated from the overall government civil service policies and management, and like all government activities, suffer from the impact of any deficiencies in this area. However, recruitment, retention and promotion of quality personnel suffer the most in those activities that politicians consider of lesser importance. This seems to have been the case in the procurement area even in countries where other government functions seem to do better. The consequence of this neglect by governments of an already handicapped system that they inherited is a crippling shortage of capacity throughout the system. On the human skills in general, the heads of procurement units and staff have not had the expertise and the formal training required to perform the function. Learning has been on the job, perpetuating the vices and practices of the past and depriving the agencies of modernization. For example in Malawi, and this is not an isolated case, based on a sample of 163 member of the Internal Procurement Committees, 53 percent did not have higher education and only 2 percent had been exposed to in-service professional development. Moreover, in almost all countries there is no procurement career stream. Selection and promotion is not competitive or merit-based, but mostly based on political, social or professional connections. All CPARs point to this deficit in human resources capacity as one of the critical reasons for poor performance.

35. At the institutional level, the newly created regulatory, control and anticorruption agencies in most countries do not have the resources to meet their mandates. Even though the laws and regulations define their responsibilities clearly, their impact on system performance has been in many cases much below expectations. As discussed elsewhere in this report, the capacity deficit is even more acute at the district and municipal levels. Scant procurement literacy extends to

CSOs which impedes a more decisive role in monitoring procurement and demanding public sector accountability for results.²³

36. *Decentralizing Procurement with no Capacity to Manage it.* Most countries in the region have promoted administrative decentralization with the encouragement of the IFIs, including devolution of procurement responsibilities to sub-national governments. This affords communities an opportunity to be more directly involved in the procurement decisions and in overseeing their implementation. However, institutional weaknesses and lack of procurement skills deepen with decentralization. There are no training programs for procurement officers of any significance and no support in the form of technical help, toolkits, help desks, or similar resources. Normally there are no instructions or manuals, simple model contracts, or basic instructions for evaluation of proposals available to the communities. Often the existence of local regulations adds to the complexity, confusion and administrative burden. Small district entities are left on their own. Since small communities and towns normally exhibit the highest poverty rates, misuse of resources through incompetent procurement has a high opportunity cost at these levels. Decentralization has been promoted as good per se without proper analysis of the possible benefits of a slower paced program supported by gradual development of local capacity. A critical question is whether a more gradual pace of “delegation with provision of capacity” could mitigate the amount of waste and mismanagement of scarce local resources. Finally, as remote communities embark in administering their own procurement, oversight mechanisms also become weaker and more vulnerable to pressure. Thus, decentralization needs stronger civil society participation; but there is no evidence of concerted and sustained efforts to organize and train communities for the task. There is an example, however, of community involvement in oversight in Box 4.

²³ The World Bank has proposed a plan to develop capacity in Africa that is relevant to this topic: See “Capacity Development in Africa: Management Action Plan FY 2006-2008– July 2006

Box 4 - Free primary education funding—an example of successful decentralized procurement

In 2003, the Kenyan government announced the abolition of school fees, thereby relieving parents of this financial cost of sending their children to school. This resulted in a large increase in primary school enrollment, but also required a new funding mechanism to compensate schools for the loss of fee income and to cover the costs of expanded enrolment. During financial years 2002/03 and 2003/04, the Ministry of Education, Science, and Technology spent KSh. 13 billion on the Free Primary Education Program, with budgetary support from donors. Of this amount, KSh. 12 billion (92 percent) was transferred to schools countrywide to be used for purchase of instructional materials and to contribute to school running costs (teachers' salaries were directly funded by government under a separate program).

While the expansion of enrollment was a self-evident success, the ministry, donor agencies and other stakeholders were naturally concerned about the efficiency and effectiveness of primary schools in utilizing their additional financial resources. The concern arose because for the first time, the government was disbursing large sums of money directly to primary schools and school managers. This created a risk of inefficient procurement, or even worse, misappropriation of funds. A recently completed public expenditure tracking study sheds light on this issue and highlights the government's success in fostering a culture of good governance in primary school procurement. The study, which covered a sample of approximately 7.5 percent of schools in each district of Kenya, found that Free Primary Education funds disbursed to schools were used for intended purposes and in accordance with procurement guidelines provided by the ministry:

- In 95 percent of the schools visited, the procurement of instructional materials was in line with the policy guidelines and regulations issued by the ministry.
- In an overwhelming majority of schools (93 percent) goods purchased were verified against a purchase order form to confirm the quantity and quality of goods received. The evidence of receipt of goods is also maintained.
- In line with good management practice, the ministry requires school management committees to convene a stakeholders meeting to review, discuss, and agree upon the school's planned expenditure at least annually. The survey team found that 84 percent of schools convened stakeholder meetings, while 82 percent of the schools visited set their expenditure priorities with the approval of school management.

The report suggests that the decision to disburse funds based on well-understood and fair allocation criteria (linked to school enrollment), and the requirement to implement transparent community monitoring through school committees has enhanced ownership of the Free Primary Education program and led to a rapid buildup in procurement capacity (and improved financial management) in schools throughout Kenya.

Source: Price Waterhouse Coopers, Ministry of Ministry of Education, Science, and Technology PETS, 2005.

37. Table 3.2 gives an overview of the prevailing institutional issues in the Region which seem particularly severe in the Francophone countries.

**Table 3.2 – Main Institutional Issues
A – Anglophone Countries**

ISSUES REPORTED IN THE CPAR	COUNTRIES AND SEVERITY OF ISSUES												
	Cape Verde	The Gambia	Ghana	Kenya	Lesotho	Malawi	Mozambique	Nigeria	Nigeria- Lagos State	Rwanda	Sierra Leone	Tanzania	Uganda
Lack of leadership and political commitment to reform and						3			3		3	2	
Shortage of procurement professionals	3	3			3	3			3		3	3	3
Absence of regular formation and training and accreditation programs.	3		2			3			3	3	3	2	
Absence of a designated regulatory body	3	1				2			3			1	

B – Francophone Countries

ISSUES REPORTED IN THE CPAR	COUNTRIES AND SEVERITY OF ISSUES										
	Burkina Faso	Burundi	Cameroon	Central African Republic	Chad	Côte d'Ivoire	Democratic Rep Congo	Mali	Niger	Togo	
Lack of leadership and political commitment to reform and			2	2	2	2			2		
Lack of a comprehensive public procurement vision, strategy, and plan			2	2	2	2	3		2		
Shortage of procurement professionals	2	3	3	3	3	2	2	3	3		
Absence of regular formation and training and accreditation programs.	2	3	3	3	3	2	2	3	3	2	
Lack of definition of career path and merit-based promotions	3	3	3	3	3						
Absence of a designated regulatory body	3	3	1	3	3	1	2	3	2		

Note: The severity of the issue has been scored as follows: **3:** High; **2:** Medium; **1:** Low or nil; Blank space : Nothing reported.- The scores reflect the authors' relative assessment based on the NARRATIVE diagnosis presented in the CPARS. However, the CPARS do not quantify it.

C. Operations and Management

38. Procurement systems in Sub-Saharan Africa are underperforming in terms of outcomes, efficiency and transparency and the quality of their management is below the levels observed in other developing regions. The following paragraphs review some of the more salient issues and opportunities for improvement.

39. *Planning, Coordinating and Integrating Procurement and Financial Management.* In the Sub-Saharan region, agencies' procurement plans are not prepared in accordance with annual operating plans linked to multi-year corporate plans that should in turn support the developmental goals of the government. The lack of integration between procurement systems and these goals of the government is costly for countries and results in delayed or under achievement of objectives. Procurement must dovetail with other government systems that procurement supports or that procurement needs to function properly, such as budgeting and financial management. In fact, procurement and financial management are so interdependent that one cannot operate efficiently if the other fails. However the prevailing conception of procurement as a self-contained process leads policy makers to underestimate the need for this integration.

40. Most regulations in the Anglophone countries and in many Francophone ones require the preparation of procurement plans at least annually. However, many consider this mandate in practice to be an academic exercise, because all parties know that the likelihood that budgetary allocations and the flow of funds will match the procurement plans is almost nil, owing to the lack of integration between the two exercises. This lack of integration between budget, financial management and procurement planning and implementation is a constant feature in all the countries reviewed for this paper (Box 3 shows examples taken from the CPARs). Integration would facilitate monitoring of the use of resources and minimize the risk of bribery to expedite payments, which is a chronic problem in most Sub-Saharan countries. Aggregate multi-term budget plans do not necessarily mirror those of individual government agencies and a similar misalignment occurs between annual country budgets and agencies' operating and procurement plans.

41. There is no systematic verification of availability of funds for new contracts; releases of cash are unpredictable and not linked to approvals for payment of invoices. Therefore, agencies purchase as they go instead of developing optimal supply strategies. Payment delays are common, all fostering higher costs and creating a breeding ground for abuse and corruption. Private sector firms of course factor in delays or unpredictability of payments into accordingly increased prices.

42. Several Francophone countries have introduced the obligation for the contracting authorities to prepare and publish their "buyer profile" or their procurement plan for the fiscal year (e.g. Burkina Faso since 2003, Burundi since 2006, Cameroon since 2004, in Niger since 2002). Preparation and publication of annual procurement plans is one of the requirements of UEMOA Directive No. 04, which is or will be incorporated in procurement codes of Member States. However, this requirement is not complied with, except for contracts financed through external funds (e.g. in Cameroon, in spite of provisions on the convening, at the beginning of

the fiscal year, of conferences on procurement programs, in practice, only 18% of the contracting authorities submitted such programs in 2004). There are still countries where there is no requirement for an annual procurement plan such as Chad, Central African Republic, Democratic Republic of Congo, and Mali (under the code of 1995 Uncertainty and frequent changes of government procurement plans, or lack of them, affect private sector preparedness to satisfy public sector demands in time, particularly for goods that require manufacture to order and that need production plant scheduling in advance.).

43. Finally, there is no evidence of mechanisms to coordinate at the highest policy level the various bodies and ministries having a regulatory capacity that might affect procurement operations. For example, while a ministry may be promoting opening government procurement to international competition to lower prices (usually the ministry of finance), the ministry responsible for industry development may be issuing instructions limiting foreign firms' participation in bidding for government contracts or establishing protectionist price preferences for domestic bids that may result in increased prices. These situations often result in turf battles in the procurement arena, which hampers progress towards better systems that might improve the economic efficiency of the entire system. A coordination mechanism could serve as a forum for reconciling regulations at two levels, one to ensure that regulations issued by different agencies are consistent with the government's strategic policy objectives and a second to ensure that different agencies do not issue contradictory or inconsistent regulations. A key question that such a forum should address is whether existing or intended regulations are helping or hindering the attainment of developmental goals of the government, and how to realign the system. Some countries in other parts of the world (e.g. Mexico) are considering creation of a procurement coordination council at the cabinet level to carry out such policy coordination.

Box 3 - Integration of Procurement and Financial Management Systems

The Gambia: “...Ministries have little capacity to plan their procurement, and also little incentive to do so as budget allocations are confirmed on a quarterly basis, and released on a monthly basis, and often for amounts below the budget allowances. As a result and for convenience, ministries carry out small value purchases on an ad hoc basis, while at the same time evading the procedures applicable if the orders for similar items were consolidated under an annual contract or framework agreement. Payment delays are commonly reported, reflecting a chronic lack of budget funds to pay for ongoing commitments...”

Malawi: “Procurement planning is currently not a part of the budget process. This leads to a situation where the funds released by the Ministry of Finance do not match the procurement requirements by the ministries. Even though the Ministry of Finance alleges to release all allocated funds during the fiscal year, the Mission encountered widespread claims that funds are not only delayed but are also not reaching the procuring entities as allocated. The problem is enhanced by the financial requirement that no tender can be floated without available funding. Such requirements dictate an upper limit to the size of tenders, which can be floated and encourages the practice of “splitting” the tendered quantities and facilitates, thereby, the excessive use of “request for quotations” instead of “open tenders”. Delays in release and shortage of allocated funds lead to delayed payments to contractors with all its negative consequences on the value for money including the following: a) bidders factor in the risk of delayed payments in their bids resulting in relatively higher bid prices; b) negative effect on contractors’ cash flow reflected in implementation delays; c) interest charges on delayed payments reducing much needed funds; d) larger amounts of local currency than originally planned due to possible changes in the exchange rates during the delay period.”

Uganda: “The Regulations specify a requirement for every procuring entity (user department) to prepare “a multi-annual rolling work-plan for procurement based on the approved budget”. Generally, the Regulations contain a comprehensive and complete list of the activities and content required for proper and timely procurement planning. However, the team only witnessed very few instances of this actually happening and then only in some of the ministries and parastatals with very large procurement budgets. The general impression was that procurements were launched either when funds were available or on an annual basis, regardless of how this corresponded with current needs. The reasons for the lack of procurement planning must be found in 1) Lack of understanding of the value of proper planning and 2) Lack of emphasis on planning in enforcement of the rules. The first issue is rooted in the general low capacity to apply the procurement rules. At most entities there is the annual entrenched process of budgeting involving all senior executives. This process needs to include procurement planning before the proper links between budgeting and procurement are made. This is not yet the case. The consequences of this practice are 1) Procurement failing to timely meet the actual needs of user departments 2) Advantages of scale and bulk purchasing are not achieved 3) Packaging and timing are not utilized to achieve value for money.”

Rwanda: “Procurement planning is still deficient, although the PPGs make it an obligation for all procurement organizations, including line ministries. Apparently the ministries have not adopted any proper planning practices and do not publish any plans, whereas NTB did not provide them with any standard planning tools or templates. As a result, it is widely recognized that ministries. carry out a lot of procurement on an emergency basis, while at the same time escaping the procedures applicable to purchases above the NTB review threshold. Payment delays are also commonly reported, which reflect a chronic lack of budget funds to pay for contracts, including counterpart funds for externally financed projects.”

44. *Systems’ Performance Issues.* There is no information to carry out any analytical work on the overall efficiency of the procurement systems in the sample of countries, but there is sufficient information in the CPARs to conclude that in spite of

having good regulations and an acceptable institutional architecture the systems are badly underperforming and incurring unnecessary costs and delays. The CPARs report numerous instances of practices or behaviors that adversely affect procurement efficiency in the form of: a) higher prices, b) longer procurement cycle with the attendant lost benefits and higher costs, and c) substandard products affecting the sustainability and economic life of government investments. Therefore, it seems more cost effective to shift the focus of further procurement country work to improving performance rather than perfecting the institutional set up or the regulations.

45. Lack of coordination between budgeting, release of funds, and procurement planning and implementation forces purchasing agencies to fraction their contracts to adjust them to the availability of funds, increasing the number of contracts they have to manage with the attendant costs, and losing the advantage of bulk procurement. Moreover, because of the chronic delay of payments to contractors and its unpredictability, firms have to factor the financing costs in their prices. For example in Tanzania funds are released quarterly but there is no way to predict the amounts of the releases, therefore payments and purchases are subject to great uncertainty and purchasing agencies have to procure goods and services as they go without any prior planning.

46. Lack of transparent evaluation of tenders by introducing criteria that are not in the original documents or that are purely subjective is a major source of abuse. This practice removes any incentive for bidders to put together their best proposal and forces them to prepare as many proposals as they can for different procurements at the same time to enhance their chances of eventually winning a contract somewhere. Preparation of proposals is costly, which added to the cumbersome and expensive registration requirements to participate and the multiple additional regulations at agency level, increases the transaction and overhead costs for firms with no obvious benefits. The long-term effect on prices and on the financial health of already weak firms with limited access to credit is not difficult to envisage.

47. Several countries (e.g. Togo) still require award of the contract exclusively to the lowest price (“adjudication”) regardless of other considerations that may represent real quantifiable costs or benefits to the procurement agency. This approach is or will be suppressed in UEMOA Member States, since Directive 04/2005 refers to the lowest evaluated bid method as the one to be used.²⁴ Niger, Côte d’Ivoire, Cameroon, Burkina Faso and Mali have adopted the lowest evaluated bid method of award, but in Central African Republic, the obsolete legislation does not even define the criteria for evaluation of bids. However, in practice, the lowest evaluated bid criterion is used. In Chad, in violation of the legislation, government agencies introduce evaluation criteria not mentioned in the bidding documents and not published elsewhere.

48. Some governments have kept the old central supply stores created during the colonial times but these are subject to pilferage and mismanagement. In Sierra

²⁴ Evaluation based on price (e.g.: for simple purchases of goods) and on other criteria such as operating costs, completion time, payment schedule, and standardization, expressed in monetary terms.

Leone, the CPAR mission found that about 90 percent of the warehouses were in poor repair, items were poorly stored, and work safety and site security were poor.²⁵ Many government agencies have decided not to take supplies from the stores but rather to purchase directly, even though legally they must use the stores. In Malawi, where agencies must purchase through the Central Government Stores, the most frequent reasons given for going outside the system were lack of stock, cumbersome process, and long delivery time. Agencies reported that they can find better prices by going straight to the market. This is an area where considerable savings are possible by consolidating purchases of consumables of various agencies and organizing bids for framework contracts. Purchasing agencies then could order from catalogs at the agreed upon prices as needed. Stores' security and management issues would disappear. These are just some examples of gross inefficiencies that are relatively easy to remove. IFIs could help governments identify major sources of inefficiencies that are easy to tackle and produce some quick gains that can be reinvested in improving performance. Some efficiency gains demonstration projects in key sectors and countries would go a long way in showing least cost performance improvements.

49. *The Dearth of Information.* Systems are not capturing reliable and relevant information on procurement operations, performance and outcomes. Comprehensive information is fundamental for assessing the system's aggregate performance, verifying compliance with the law, data mining for control, benchmarking prices, analyzing market trends, and developing supply management strategies. At the same time, regular publication of reports, with relevant information that is easily understandable, is essential to engage civil society in procurement oversight. Most systems do not have a central repository of information that is easily accessible by those with a legitimate interest (e.g. planners, comptrollers or civil society). The little information available is scattered across government agencies; its integrity and reliability are poor. This lack of information cripples proper audit and controls and frustrates civil society oversight of procurement even of individual procurements, not to mention entire programs.

50. *Electronic Government Procurement (e-GP) a Promise and a Challenge.* Electronic Procurement can be a powerful vehicle of change and modernization, and has the potential of transforming the procurement culture by generating strategic information for procurement planning, fostering competition and transparency, and increasing citizens' confidence in Government procurement. The strategic use of information via e-GP would be helpful for detecting market trends, establishing effectiveness parameters for public expenditure, preparing procurement strategies, measuring and guiding the general performance of the procurement system, and gauging the effects of public procurement policies on promoting domestic industry. In addition, it would make it possible to identify the level of participation in public procurement in different economic sectors and regions so the government could

²⁵ At the Stores of the Ministry of Education Science and Technology, the [Procurement Issues] main mission noted that large volumes of text books and other educational materials were not stored on pallets but on the bare floor leading to deterioration. Worst of all an open candle was used for lighting, greatly increasing the fire hazard with the risk of loss of property and lives. The fire extinguishers in most of the stores visited had not been serviced in a long time. Most of the stores were in a poor physical state with cracked walls and leaky roofs. Security was also assessed as poor.

analyze the effectiveness of its current approach to protecting domestic industries. The information that is potentially available by e-GP is crucial for establishing the Government's public procurement strategies and development policies. As a strategic tool, e-GP could also spur participation by more bidders in competitive bidding processes, by helping to reduce the costs of participation and improving the transparency of the procurement system. Suppliers and buyers need to receive value-adding benefits from using the system. Good systems assist with contract development by, for example, providing immediate access to standard contract templates and specifications, and even performance reports on previous contractors.

51. E- GP is just starting in some countries in the form of portals used mostly for information purposes. In Uganda, the Public Procurement and Disposal Authority (PPDA) and other agencies have developed websites for posting legal and regulatory information. In Mozambique, the Functional Unit for Supervision of Procurement (UFSA) operates a web page for information purposes. Nigeria is also at the early stage of implementing an e-GP development strategy but faces shortages of technical skills to do it. Similarly, Malawi is at an early stage of planning for future e-GP operations. There are no systems with transactional or analytical capabilities yet.

52. Owing to the technological and logistical limitations in the Region, it seems appropriate to develop plans for gradual implementation of e-GP in a modular way that over time can extend its scope throughout the government and add more sophisticated functions as additional capacity is available. Sub-Saharan Africa could benefit from the experiences in other developing countries that are more advanced in implementation of these systems and anticipate difficulties, costs and delays in implementing e- procurement. For example in Latin America, many countries have struggled with issues of connectivity and unreliable communication and power supplies. Cultural prejudice has also impeded the widespread use of e-procurement, as many bidders initially do not trust the security levels of electronic systems and prefer paper-based transactions. Bureaucratic power struggles have often resulted in various agencies having their own e-procurement systems that are costly and difficult to integrate at later stages.

53. Table 3.3 summarizes the main operational and managerial issues reported in the CPARs reviewed for this study.

Table 3.3 – Operational and Managerial Issues

A- Anglophone Countries

ISSUES REPORTED IN THE CPAR	COUNTRIES AND SEVERITY OF ISSUES												
	Cape Verde	The Gambia	Ghana	Kenya	Lesotho	Malawi	Mozambique	Nigeria	Nigeria-Lagos State	Rwanda	Sierra Leone	Tanzania	Uganda
Deficient or no procurement planning					3	3	3		3		3	3	3
Lack of integration with budget and financial management system		3			3	3	3		3			3	3
Inadequate procurement data or information and monitoring systems		2				3	3		3			2	3
No consolidation of procurement across agencies.		3				3	2		3			3	3
Prevalence of fractioning in small contracts		3				3	3		3		3	3	3
Overburdened process and/or time to process contracts							3		3		3	3	
Status of development of e-GP							3		3		3	3	
Poor contract management and chronic arrears							3				3		3

B- Francophone Countries

ISSUES REPORTED IN THE CPAR	COUNTRIES AND SEVERITY OF ISSUES									
	Burkina Faso	Burundi	Cameroon	Central African Republic	Chad	Côte d'Ivoire	Democratic Rep Congo	Mali	Niger	Togo
Deficient or no procurement planning	2	3	2	3	3	2	3	3	3	
Lack of integration with budget and financial management system	2	3	2	3	3	2	3	3		3

Note: The severity of the issue has been scored as follows: **3:** High; **2:** Medium; **1:** Low or nil; Blank space : Nothing reported.- The scores reflect the authors' relative assessment based on the NARRATIVE diagnosis presented in the CPARS. However, the CPARS do not quantify it.

D. Controls and Integrity

54. All the CPARs reviewed point consistently at the lack of controls and system integrity as a major and prevailing issue throughout all countries. Table 3.4 to this paper shows the strong incidence and severity of this issue.

55. *Government Controls, Audits.* In the Region, legislatures are ultimately responsible for oversight of procurement operations through its review of periodic audit reports submitted to them by the Supreme Audit Institution (SAI). However, irregularity of audit reports and their limited scope and relevance renders the process inconsequential. The lack of technical and operational capacity to carry out adequate procurement audits characterizes the SAIs across the region. This weak capacity the quality of record keeping at the implementing agencies, and, in some cases, political interference and lack of independence further cripples their effectiveness. They do not get help from internal control bodies because these functions are only now emerging in a handful of agencies in few countries (in Ghana about one quarter of executing ministries and agencies have internal control arrangements).

56. Audits are sporadic at best and focused on process but not on risks and results. For example, in the Gambia, there is no internal audit and the Auditor's General Office has delegated procurement audits to the Gambia Public Procurement Authority (GPPA). The GPPA carries out scattered procurement inspections that normally culminate in recommended follow up actions. GPPA issues a report to the inspected organization, but there are no consequences for lack of compliance. In Malawi and Tanzania, the National Audit Offices are widely recognized for not having the capacity to carry out adequate procurement audits and in Lagos State in Nigeria, political interests heavily influence the audit office. In Nigeria, audits were three years behind schedule at the time of the last CPAR. In the Francophone countries, authorities such as "Cour des Comptes" or "Inspection Générale des Finances" are supposed to audit compliance of public procurement processes as part of the audits of public expenses. However, they do not exercise a specific control on public procurement as required by the UEMOA Directive. The independent regulatory authority may use private audit firms or can instruct those public bodies to conduct specific controls. In Cameroon, the Code provides for an ex post review by an independent auditor for all the contracts over 500 million FCFA and 25% of contracts between 30 million and 500 million. In Niger, an institution, "Chambre des Comptes," could in theory exercise audits on public procurements. However, its limited investigation and follow-up capacity makes it ineffective.

57. Creating control capacity and relevant methodological approaches is going to take a long time. Besides, it is questionable whether there is political will to do so. One possible explanation is interference by political and economic groups interested in maintaining the status quo. Encouraging and supporting a stronger and more visible role for the civil society in demanding better controls and better system performance could counterbalance these interests and attitudes, as discussed below in this report. In the interim IFIs could also help by exercising further influence on the governments (including legislatures) and by providing specifically targeted support for control improvement. Governments could consider several short-term actions like

crash procurement training for groups of specialized auditors, outsourcing critical procurement audits, and twining government auditors with consultants with explicit knowledge transfer objectives. Audits could also be more selective by focusing the few resources available on high-risk agencies and high-value operations while further capacity is gradually created. The medium-term strategy should focus strongly on improving controls performance even at the expense of carrying out fewer but high-quality audits instead of system-wide low-quality ones just to satisfy the mandated periodicity or coverage that in any event is not being accomplished.

58. *Records Management.* Most CPARs report this as a neglected area in the Region. Poor record management cannot document and fully support procurement governance or provide access by interested citizens (see Box 5). Even though audit reports have highlighted this deficiency, little is done to correct it and there are no consequences for delinquent officials. However to make the code of records management effective, it must be legally enforceable and should include sanctions for failure to comply with it. The legal basis for enforcing proper recordkeeping seems to be weak throughout the region. Modern Freedom of Information Laws (FOI) establish norms to deal with privacy and management of archives.²⁶ Other laws mandate that the competent government authority issue regulations on records management (e.g. UK Freedom of Information Act 2000 – section 46). The lack of good record management and reliable performance reports in the procurement sector is a formidable hurdle to procurement oversight by government auditors and by the public at large.

²⁶ See for example Northern Territory Government, Australia Information Act. Available at http://www.austlii.edu.au/au/legis/nt/consol_act/ia144/.

Box 5 - Procurement Record Keeping in Africa

The following examples taken from the CPARS provide an overview of the quality of record keeping. In Sub-Saharan Africa

The Gambia – Record keeping is an obligation of procuring organizations stipulated in detail in the PPA (Public Procurement Act). As documented in GPPA's (The Gambia Public Procurement Authority) statutory compliance reviews carried out in 2004, record keeping is very frequently deficient, making it most problematic for GPPA to review and assess other areas of compliance.

Kenya - With lack of attention, many weaknesses persist in the back-end components of the public procurement procedures, including filing of procurement documentation and procedures for the certification of goods, services, and works received. These weaknesses arise in part because institutional arrangements to ensure their proper functioning are not well developed. The IPR, for example, suggests that the fundamental importance of implementing effective filing systems does not seem to be fully appreciated within the administration, especially with regard to the filing of procurement documentation and its link to expenditure documentation. The separation of procurement documentation from expenditure documentation, without proper and effective linkages between the two filing systems means there is very poor contract payments management.

Malawi - Most entities visited by the Mission displayed a combination of incomplete files and inadequate filing systems. A number of public entities informed the Mission that collection of proposals could be verbal, even though the Interim Regulation demands that all proposals must be in writing. In addition, files would apparently go missing during ordinary office routines, without causing any great alarm. The most common filing system is to file by document type, and not contract-wise, i.e. all advertisements in the office are filed together, evaluation reports are filed together, etc., making it difficult and time-consuming to collect a complete procurement file for a particular contract. This practice, together with the issue of missing files, also poses an obstacle to monitoring and the proper execution of procurement audits.

Uganda - The Records and Archive Act (2001) requires all public entities to observe proper filing. The Act has not yet been fully implemented. In addition, the Procurement Regulations have very detailed instructions on the contents of a proper "procurement file." The team found two issues in filing: 1) Missing or incomplete files, caused by carelessness or apparent malpractices and 2) Faulty filing systems, where documents are grouped with similar documents ¹instead of in one complete file. Such lack of proper filing has also been recorded in every audit report on procurement in Uganda.¹ Notably, the purpose of the procurement file is to serve as the basis for any audit and enforcement effort. To look at it another way: to allow filing to be incomplete or missing is to give room for corruption to spread.

59. *Dispute Resolution Impact Market Perceptions and the Cost of Doing Business.* Adequate pre-contractual and contractual independent dispute resolution, enforced as prescribed in the laws, is one of the critical elements to promote transparency, predictability, and public trust in a procurement system. Most countries in the Region have created appeals and complaints mechanisms to resolve pre-contractual disputes during the bidding process. However, these systems are either not functioning or are functioning with severe limitations for a number of reasons, but mostly because of lack of capacity and independence. This state of affairs, and the lack of clear contractual dispute mechanisms outside the courts, creates such legal risk for bidders that they need to factor it into their prices. Or worse it can keep them away from doing business with the government, which limits competition. According

to interviews with private sector firms during the preparation of the CPARs, bidders do not complain for fear of retaliation by the contracting agencies in the form of explicit or implicit black listing. This fear is prevalent throughout the entire set of countries reviewed. In countries where the government is the most important or the only source of business, firms prefer to let abuse and arbitrariness go on before shutting the door to future business. There is an abnormally low level of complaints (based on the scant information available) when compared with statistics in other parts of the world. For example, in Ghana, a recent application of the OECD methodology for evaluation of performance of procurement systems, showed zero complaints in some government agencies. In Uganda, there are no statistics on complaints but officers “recalled a few ones many years back”. At the Malawi Ministry of Health, there was less than one complaint per year, but there was anecdotal evidence across the government agencies that bidders often resort to filing verbal complaints at various points based on personal relations and “something was worked out.”

60. The perceived or real lack of independence of the review process is also stifling its effectiveness. Generally, the same agency responsible for overseeing, reviewing, or advising the procurement process is the one responsible for resolving pre-contractual disputes. Moreover, according to private sector firms, designated dispute resolution agencies do not have the political influence to overcome political interference by high levels of government and are thus ineffective. This creates real or perceived conflicts of interest and low trust in the system. In other cases, (Malawi and Lesotho), there is no clarity on the sequence of the appeals process.

61. There is not much information in the CPARs on the use in the Region of Arbitration and other forms of alternative dispute resolution (ADR), such as adjudication and conciliation, to address contractual disputes, and literature on the topic is scarce. While Africa seems to be behind other regions in developing ADR regulations, many countries in the Anglophone group have made considerable progress in adopting Arbitration Laws that follow the UNCITRAL Model Law on International Commercial Arbitration. These countries have a longer tradition of arbitration because England extended the application of its Arbitration Act to its colonies. By contrast, the French did not extend their arbitration legislation to their colonies.²⁷ All countries in Africa adhere to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). This area requires further exploring because the lack of ADR availability to solve contractual disputes places an enormous legal risk in countries where courts have a reputation of being bureaucratic and captured by other interests. The cost of proposals reflects this risk.

62. *Systems’ Integrity, a Major Concern.* Systems’ integrity is a major issue in the Region. It is not surprising that in the lax control environment described in most CPARs, the opportunities for abuse are many. Even though most countries have anti-corruption laws and many have various anti-corruption agencies and bodies, their effectiveness and capacity are so low as to render them empty shells. In spite of all

²⁷ The Evolution of Arbitration laws in Francophone Africa – Dr Roland Amossou- Guenou – 1996 – 1998 WGZ.

these efforts on the regulatory and institutional fronts, perceptions of widespread corruption are high and Sub-Saharan countries have made little progress in improving the anti-corruption and governance indexes published worldwide by leading international agencies working on these subjects.

63. Even though most laws and regulations establish open competitive bidding as the preferred method of procurement, in practice this is not the case, (e.g. in Democratic Republic of Congo, only 3 percent of the contracts would be subject to open competitive bidding). The CPARs report the excessive use of direct negotiation or restricted tendering by the contracting authorities, which often invoke urgency as a justification, while urgency may derive from the lack of preparation or self-generated delays. In Niger, civil society observers report that non-transparent procedures constitute the standard practice, which usually leads to awarding contracts to non-qualified bidders and more expensive contracts. The use of less transparent methods of procurement may also result from the loose wording of regulations. Under the most recent procurement codes and UEMOA Directive n°4, procurement methods other than the open competitive bidding are limited to strictly defined circumstances and their use has to be agreed on by the controlling authority.

64. A major contributor to low integrity of these processes is the lack of high-level political commitment to enforce the law and of a more marked and clear demand for it by civil society and the private sector. For example, in the Gambia, the Public Procurement Act provides for procedures to report corruption cases but not one was reported in the two years following the enactment of the law. In Rwanda, the regulations include a provision on fraud and corruption which is similar to the provision in World Bank Guidelines; however, breach of the provisions does not accrue any penalty. In Nigeria, the government has an elaborate set of anti-corruption provisions and created a large network of institutions, including 138 anti-corruption units under the Economic and Financial Crimes Commission and 36 Offices under the Independent Corrupt Practices Commission. Since 2003, 40 cases have been investigated involving 100 officials, resulting in 5 convictions. In Togo, the National Commission for Combating Corruption and Economic Sabotage (CNLC) stresses that the majority of identified corruption cases resulted from provisions of the bidding documents that imposed qualification conditions that local firms could not meet, thus requiring collusion with the administration for the companies to be able to present their bids. In Cameroon, in spite of the institutions that have been set up and the efforts made within the national policy on governance, according to Transparency International classification on corruption in 2004, Cameroon is ranked 129th out of 146 countries. In Central African Republic, according to an inquest conducted with Transparency International in December 2005, the level of corruption amounts to 90 to 94 percent of transactions. When bribery and corruption settle as a practice, it leads to significant increase in prices, or to lower quality of goods and services, and the attendant loss of benefits as bidders factor the bribes and facilitation payments in their bids. This state of affairs has led to an increasing lack of public trust in the system.

65. In most of the Francophone countries, provisions on corruption specific or not to civil servants are part of the Criminal Code. To facilitate the application of

sanctions, procurement codes specifically allude to acts of active corruption (i.e. the fact of proposing money or a service in exchange of an undue advantage) and passive corruption (i.e. the fact of accepting the money or the service). These codes include administrative sanctions (i.e. hierarchical offences for the civil servants and a ban from public procurements for the bidders) and provide for offenses of corruption specific to civil servants (e.g. in particular: Côte d'Ivoire, in Chad in the new code, Togo). In practice, the offenses are very seldom prosecuted. More generally, in most of the countries there is no adequate institutional framework to implement the provisions related to the fight against corruption due to the absence of national strategy on the subject, (e.g. Burkina Faso, Niger).

66. Political capture of the tender boards and the frequent conflicts of interest of their members exacerbate the integrity issues. Uganda has a quite elaborate set of legal provisions and anticorruption agencies. However, the CPAR reports numerous examples of major corruption known publically and persistent issues with political appointments of tender boards members,²⁸ tender board members in clear conflict awarding contracts to themselves, secretaries of tender boards awarding contracts without going through the tender board, and contract amounts increased without justification. The Auditor-General has estimated that some 20% of the value of public procurement is lost through corrupt practices with concomitant effect on the cost, quantity and quality of public services, and thence, on the attainment of national poverty reduction and other policy objectives. Notwithstanding the existence of this comprehensive legal and regulatory framework, the Ugandan government has recognized that additional legislation is required, and that several elements of it that relate to accountability and corruption require strengthening.

67. Table 3.4 presents an overview of the main control and oversight issues in Sub-Saharan Africa.

²⁸ Uganda – Country Procurement Report – Volume II – June 15, 2004 – The World Bank

**Table 3.4 –Main Control and Oversight Issues
A - Anglophone Countries**

ISSUES REPORTED IN THE CPAR	COUNTRIES AND SEVERITY OF ISSUES												
	Cape Verde	The Gambia	Ghana	Kenya	Lesotho	Malawi	Mozambique	Nigeria	Nigeria- Lagos State	Rwanda	Sierra Leone	Tanzania	Uganda
Existence, relevance and role of internal controls		3	2		3	3	2		3			3	3
Meaningful External Audit		3	3		3	3	3		3		3	3	3
Ex-ante controls or approvals as opposed to risk prevention		3					3		3			3	
Poor record keeping		3				3	3		3		3	3	3
Independent review of pre contractual complaints		3			2	3	3		3				
Fear of retribution for complaining		3				3	3		3		3		
Public perception of corruption						3	3				3		3
Year in which present Procurement Law was enacted		2003	2003	2005	2007	2003	2004	NA	NA	2007	2004	2001	2003

Note: The severity of the issue has been scored as follows: **3:** High; **2:** Medium; **1:** Low or nil; Blank space : Nothing reported.- The scores reflect the authors' relative assessment based on the NARRATIVE diagnosis presented in the CPARS. However, the CPARS do not quantify it.

B - Francophone Countries

	Burkina Faso	Burundi	Cameroon	Central African Republic	Chad	Côte d'Ivoire	Democratic Rep Congo	Mali	Niger	Togo
Existence, relevance and role of internal controls	3	3	2	3		3	3	2	2	3
Meaningful External Audit	3	3	2	3				3	2	3
Decisions subject to ex-ante controls or approvals as opposed to risk prevention	3	3	2	3	3	3	3	3		3
Poor record keeping	3		2	3		3	3	3		3
Exceedingly centralized decision making		3			3	2	3			3
Organization and capacity of Civil Society	3	3		3				2		
Independent review of pre contractual complaints	3	3		3		3	3	3		3
Existence, quality and credibility of the Alternative Dispute Resolution	2	3	2	3	3	3	3			2
Public perception of corruption	3	3	2	3	3	3	3	3	3	2
Year in which present Procurement Law was enacted	2003	1990	2004	1961	1990	2005	1969	1995	2002	1993

Note: The severity of the issue has been scored as follows: **3:** High; **2:** Medium; **1:** Low or nil; Blank space : Nothing reported.- The scores reflect the authors' relative assessment based on the NARRATIVE diagnosis presented in the CPARS. However, the CPARS do not quantify it.

D. Civil Society Oversight

68. *The Ingredients of Civil Society Oversight.* Governments worldwide increasingly recognize civil society participation to be a critical element in any balanced system of accountability. As such, it has a role in monitoring procurement operations and efficient delivery of public goods and services, and in promoting demand for good governance. In most countries, there is awareness that the electoral process by itself does not send the proper message when it comes to issues of resource management and accountability in public procurement. Therefore, many CSOs are increasingly taking direct action and governments increasingly recognize that CSO participation can lend them legitimacy and credibility. However, to play their role effectively CSOs must have the right to do so, the necessary information, and the skills and organization to do the job effectively. In Sub-Saharan Africa these three elements can be strengthened.

69. *The Demand Side of the Equation.* The role of civil society in Sub-Saharan Africa in overseeing procurement is in its infancy and is much less significant than in Latin America, for example.²⁹ The CPARs include little information on the role of civil society in procurement oversight but there are references that illustrate the situation. In Ghana, some civil society organizations have started to implement initiatives to monitor compliance with the new procurement law and to track budget and expenditure in public works. In Tanzania, the group of NGOs working in the area of anti-corruption is very limited. Most of the NGOs are based in Dar es Salaam with limited outreach or operations in the regional and rural areas. In addition, none of the NGOs interviewed have developed particular activities targeting public procurement, and none had planned to do so. In Malawi, several of the people interviewed during the CPAR mission pointed to the lack of capacity among local NGOs as a critical factor hindering civil society involvement in monitoring public procurement. The Anti Corruption Bureau provided the Mission with a list of NGOs, which it collaborates with through its public education activities, and none of these NGOs focus specifically on corruption in procurement. However, the Mission met with the Malawi Economic Justice Network (MEJN), a coalition of civil society organizations, which has developed and is currently implementing mechanisms for monitoring the Government budgeting process. MEJN is also attempting to conduct financial expenditure tracking, but this task has proven very complicated due to lack of transparency and discrepancies between allocated expenditure and actual expenditure.

70. Civil society demand for good procurement by keeping public officials accountable for results could be a powerful driver to modify the present culture of non-compliance with the rules in the Region, to promote better effectiveness of anticorruption agencies, and of the slow and unpredictable judiciary process. NGOs,

²⁹ For example in Peru CSOs are involved in many activities such as: Offering recommendations to improve the system, promoting good governance by awarding prizes to well performing agencies, conducting social audits of procurement processes, developing risk maps, preparing proposals for reforms, providing training to other CSOs in municipalities and villages, and undertaking comparative analyses.

private sector professional and business organizations, and the media need support and assistance to play the oversight role. This assistance could come from the IFIs, or from international NGOs in the form of training, funding, and advice on how to organize their roles effectively. Box 6 gives an example of how IFIs are helping CSOs strengthen the demand side of the equation.³⁰

Box 6 – The Oversight Role of Civil Society

Increasing awareness of the potential role of civil society in fighting corruption has only materialized in a few of the (World) Bank's anticorruption lending programs. For example, reforms in Ghana to strengthen good governance and social accountability have, to an important extent, been demand driven from civil society; the Freedom of Information Act is expected to further strengthen the voice of civil society. In Indonesia, demand-side efforts brought in civil society and local stakeholders to perform monitoring and evaluation functions, especially in decentralization projects, investment climate surveys, and PETS.

In Ukraine, the Bank has supported a program called Voices of the People. This program's goal is to improve municipal-level integrity by strengthening the voice of citizen groups as they demand better services and governance. The Canadian International Development Agency also supported this program. It started as a pilot in four cities monitoring local service delivery, promoting NGO capacity, and facilitating public involvement in government decision making. Positive reaction to the first phase led to the addition of six more cities for the second phase, starting in 2003.

The cases and literature reviewed raise challenges to traditional supply-side approaches—leaving it to the government and a country's legal institutions to devise and enforce public accountability. Conventional mechanisms, such as anticorruption commissions and audit and legislative reviews, may not be enough, (Reinikka and Svensson 2006, p. 368). Collusion, organizational deficiencies, abuse of power, and lack of responsiveness to citizens have been hard to detect and rectify, even with the best of supervision. When the institutions are weak, as is common in developing countries, the government's potential role as auditor and supervisor is even more constrained.

Evidence suggests that corruption can be substantially reduced only when the supply-side reforms are complemented by systematic efforts to increase the citizens' capability to monitor and challenge abuses of the system and to inform the citizens about their rights and entitlements. Breaking the culture of secrecy that pervades the government functioning and empowering people to demand public accountability are important components in such an effort.

71. Reform-minded governments can also help strengthen the role of CSOs by engaging in a constructive dialogue and promoting public participation as a welcome form of control and not to discourage it by dismissing it as a form of political opposition or subversion or through intimidation or political retaliation. There are examples elsewhere where governments have actually enacted legislation enabling participation by CSOs and creating mechanisms to support and promote it (Box 7).

³⁰ Quoted from: Public Sector Reform: What Works and Why? – An IEG Evaluation of World Bank Support - The World Bank, 2008

Box 7 - A Legal Model for Civil Society Participation

Colombia offers a progressive model of government promotion of civil society participation. The country enacted modern legislation (law 850 of 2003) on the role, rights and obligations of civil society oversight organizations (called “*Veedurías Ciudadanas*”) and the scope and nature of their work. The law grants citizens the right to organize oversight bodies and sets out the obligation for public agencies and officials to cooperate with them and facilitate their work. The law also promotes and regulates the creation of networks of oversight organizations and created an institutional network to promote and support them (the members are, the Attorney General, the Comptroller General, the Government Ombudsman, and the Ministry of the Interior). The law assigns the training of the oversight organizations to the School of Public Administration. The performance evaluation of the program is the responsibility of the Administrative Department of the *Funcion Publica*. A community participation and development fund administered by the Ministry of the Interior finances training of oversight organizations and dissemination of the program. Although progress in implementing the program has been difficult and the pace is slow, it is mostly owing to shortage of resources to finance initial setup and administrative expenses of the oversight organizations. There are encouraging signs that the system is gradually taking root across the country. One of the major risks of the program is capture by grass roots politicians for personal political gain.

72. *Access to Information is Critical.* According to a study carried out between 2003 and 2006, Freedom of Information (FOI) laws in Africa are mostly founded on weak information management systems that do not have the capacity to assure citizens that they can have direct access to reliable information. Furthermore, the legislation has not encouraged good information management practices (Box 8).³¹ By 2007 only Angola (2002), South Africa (2000), Uganda (2005) and Zimbabwe (2000) had enacted FOI laws and others such as Botswana, Nigeria, Swaziland and Zambia are in the process of enacting such laws. The regulation of FOI is critical to a meaningful civil society role in overseeing procurement operations and results and in ensuring officials accountability. Regulations should not only reaffirm the right to access but also establish the right for the public to request information that the government does not make available as matter of course or of the archival type. Regulations should also set the terms for response by public officials and the remedies and penalties for refusal to furnish the information requested within the established time. The objective of the law should be to promote a cultural change in public officials from the “all is secret” motto to the “all is open” one. Finally, FOI laws do little in absence of relevant and reliable information. In absence of strong record management practices, FOI laws cannot be enforced and would not achieve the objectives of enhancing transparency and accountability and reducing corruption. Issuance of FOI laws and appropriate record management regulations must be a high priority in any furthering of procurement reforms towards good levels of performance.

73. *User-Friendly Government Reporting is a Signal of Commitment.* Effective civil society oversight requires, besides granting access to information, that government agencies generate and widely disseminate reliable and relevant

³¹ Quoted from “Information Management in Africa to Undergo a Change?” – Peter Sabina (PhD) – University of Botswana – Gaborone, Botswana -2006.

information on public procurement on a regular basis. Reports must be easy to read and to understand by the common citizen. Perhaps one of the most important signals of government commitment to transparency is the establishment of an ongoing dialogue with respected CSOs on the nature, content, and dissemination of the reports needed by the public to understand the processes and results of procurement. It is not sufficient to place collections of more or less incomprehensible data on an electronic portal or in the official gazette or publish newspaper reports to give the appearance of transparency and openness. The degree of procurement or technological literacy needed to access the information is beyond what exists in many of the countries. This issue is particularly relevant to activities implemented in rural or remote communities. The IFIs could start modeling the access to better information by requiring agencies to post information on IFI-financed procurement operations in friendly formats that would need to be developed in consultation with the CSOs.

IV. Procurement Reforms in the Region

A. Towards Reforms

74. The path to reform in Sub-Saharan Africa has been long and difficult because of the low capacity and fragile public sector institutions inherited from the colonial administrations, as well as the limited skills of those dealing with procurement. Totalitarian states and authoritarian governments in the postcolonial era before the 1990s (e.g. Uganda, Central African Republic) exacerbated the lack of accountability and alienated civil society from playing a significant role in state matters. Some other countries faced devastating conflicts and civil wars (Rwanda, Sierra Leone, Angola, Mozambique) that left institutions depleted of technical or financial capacity. Moreover, this period left a hard-to-change culture of poor compliance with the law. In many countries, there are still vestiges of that culture that would take time to eradicate. In spite of the severe financial, technical and institutional limitations, most countries have made remarkable progress in creating legal and institutional foundations of their procurement systems, primarily during the last decade.

B. The Tale of Four Reforms

75. *Ghana – Reforming out of Frustration.* Until independence in 1957, the colonial administration undertook procurement of goods and works through the Public Works Department (PWD) and Crown Agents in the UK. Upon departure of the colonial administration, there was little capacity left to administer procurement in Ghana, so the government continued to engage Crown Agents. Reliance on that agency decreased gradually as the newly created ministries and government agencies gained capacity to handle procurement by themselves. During this period the Government set up Ghana National Construction Corporation (GNCC) to carry out works and the Ghana Supply Commission (GSC) for procurement of goods for all public institutions. Essentially GSC took over the functions of Crown Agents. In 1976, the Government established Ghana National Procurement Agency (GNPA) for procurement of bulk items such as sugar, fertilizers, and auto parts, for sale to both public and private purchasers. By 1996, demands from its clients overwhelmed GSC. There was also accumulated frustration with GSC's inefficiency and numerous complaints on contract prices, slow delivery, and delivery of wrong items at times. Government agencies began to handle procurement of goods themselves following existing norms, but without the proper institutional arrangements. Obviously, the system was incapable of supporting the government's needs.

76. In 1996, the World Bank carried out a CPAR and recommended radical changes to the system. Ghana then agreed to undertake them under a technical assistance loan to improve public finance management. The Bank was instrumental in catalyzing consensus within the government on the nature and scope of the reforms through different events involving government agencies, civil society organizations, the business community, and the media. There was much resistance to the changes, and it took intense public debates and six years to draft and pass the present law.

Persistence and strong support from the IFIs during this period were critical to this change.

77. Ghana, like other countries in the Region, has much work ahead to improve performance of the system and to create the necessary capacity. However, the newly created Public Procurement Authority has started on this path with promising steps and much determination. The PPA, building on a robust legal framework, initiated a 3-year capacity-building program that includes a short-term training program for procurement professionals. The Head of the Civil Service has recently approved a report prepared by the PPA on the “Career Development of Procurement Professionals and Practitioners in the Public Civil Service”. The plan includes the establishment of public procurement as a separate function within the public civil service in Ghana to retain competent officers. These actions are likely to start addressing the glaring need for a stable and competent cadre of skilled procurement officers and managers.

78. *Mozambique - A Post Conflict Reform.* Mozambique came out of a devastating civil war in 1994 and the last UN peacekeeping troops left the country in 1995. By 1995, the 1.7 million refugees who had sought shelter in neighboring countries were returning to Mozambique and about 4 million internally displaced people were resettling in their homes. This has been the largest resettlement operation in Sub-Saharan Africa. The path to recovery has been difficult, and political and institutional reconstruction of the country as it moved to a multi-party system has been challenging. Besides the overwhelming effects of the war, Mozambique experienced in 2000 a devastating cyclone that set back the little economic and social progress achieved since the end of the conflict.

79. The derelict condition of Mozambique after the war extended to procurement operations. The 2002 CPAR identified a system essentially incapable of delivering the services and goods that the reconstruction program demanded. There was no clear institutional apparatus to regulate and administer procurement; legislation was dispersed in numerous directives and instructions, there was no technical capacity; corruption and abuse were rampant. There were suspicions that powerful political leaders were diverting the abundant foreign aid that poured into the country to their supporters. For instance, in 2004 a report from Mozambique's Administrative Court to the Parliament claimed that aid from Japan and the U.S. Agency for International Development, distributed by the African Development Bank and the World Bank, went to Mozambican companies without public tender or guarantees for reimbursement.³² Poor donor coordination, heavy donor demands on the weak management capacity of government agencies, and donors' diverse procurement rules exacerbated the inefficiency of procurement operations.

80. By 2002, it was clear to the government and to the IFIs that an effective delivery of reconstruction foreign aid was not possible without a drastic reform of the legal and institutional arrangements for public expenditure management, including procurement. IFIs finance up to seventy percent of the public investment in

³² Marcelo Mosse. 2006. Global Integrity Country Report on Mozambique. See online at <http://www.globalintegrity.org/reports/2006/mozambique/notebook.cfm>

Mozambique. The government then agreed to embark on a comprehensive Public Financial Management reform program with the help of the IFIs, which is now in its second phase of implementation.

81. There has been significant progress in reforming procurement since 2002. The government issued a new procurement law in 2005 and created a procurement lead agency; issued procurement regulations; and prepared standard bidding documents; forms of contract; and a procurement manual for dissemination and adoption of the law and regulations. A major step is the integration of procurement with the Public Financial Management System (SISTAFE), an electronic system.

82. As in the case of Ghana, substantive work is needed on the creation of capacity, better controls, and better system performance. The media and some recently created NGOs active in procurement are emerging as important players in generating demand for better performance. Changing cultures and old behaviors is challenging and will take much more time and sustained effort, but the progress made thus far is promising.

83. *Uganda. – Reforming out of External Pressure.* After experiencing strong economic growth and poverty reduction rates during the 1990s, the trend appeared to reverse in the early 2000s due in part to the fall in coffee prices and stagnation of domestic tax collection at about 12 percent of the GDP. At the same time, government expenditures, under pressure from social needs, grew from about 16 percent of the GDP in 1997 to 25 percent in 2002. Since then the international community has been financing most of the deficit with resources that amount to about half of the government's budget. These resources have usually been in the form of specific investment support but are increasingly in the form of direct budget support.

84. Financing by IFIs on this magnitude posed important challenges to the economic and monetary management by the government. The government has resorted to a range of monetary and public expenditures measures to contain excess liquidity and inflation and at the same time has considered ways of reducing public expenditures and increasing the tax revenue base. The major challenge is to balance monetary and macro economic stability while keeping the level of investments required for sustained economic growth at an acceptable poverty reduction pace.

85. Under the circumstances described, the IFIs were concerned with the efficient use of foreign aid and government resources. They were also concerned about the need to meet their fiduciary obligations in light of increasing flows in the form of budget support. The situation in Uganda made it essential to create additional fiscal space through an efficient management of public expenditures; good procurement management was critical to that effect. This required an efficient, reliable and transparent procurement system with appropriate controls that did not exist in Uganda. The World Bank decided to carry out a CPAR in 2001 that found major deficiencies in the Ugandan procurement systems and proposed an action plan to address them.

86. Under strong pressure and conditionality from the IFIs to ensure continued external support, the government embarked on a reform process in 2002. Uganda issued new laws and regulations in 2003 and reorganized the institutional set up to

administer and oversee procurement operations. However, the lack of technical capacity and of political will to make the reforms work has dampened the pace of implementation. The pressure by the IFIs and need to keep external aid flowing forced the reforms, but the government has not implemented the new rules. Ninety percent of corruption complaints received by the Inspector General relate to procurement. However, in spite of the abundant legislation against corrupt practices, (at least ten major pieces of legislation), and the huge institutional apparatus to combat it, it seems to continue unabated. The president's office centralizes most of the decisions and the procurement authority does not have the power to administratively sanction non-compliant officers. According to the CPAR, only about 30% of public contracts comply with the procurement law. The biggest problems with procurement are the lack of a culture of excellence in performance, and the failure to comply with the law in an environment where public officials and private sector participants in public procurement do not see a risk in not complying.³³

87. *West and Central Africa Reforms – Common Market Driven Reforms.* The creation of the UEMOA and the CEMAC common markets forced member states to harmonize procurement practices and therefore afforded an opportunity to establish modern institutions and regulations across west and central Africa. UEMOA's member countries have agreed to harmonize the legal framework applicable to public procurement. In December 2005, the Council of Ministers adopted two directives aimed at: (a) harmonizing in detail the Government procurement procedures in all Member States (Directive n°04/2005) and (b) establishing principles regarding the regulation and control of public contracts (Directive n°05/2005). Within CEMAC, the Regulation of country practices affecting trade among Member States provide for some basic principles such as publication requirements and open tender procedures for contracts above a threshold defined at the Community level. Below the threshold, each Member State may apply its contract award procedures, which vary considerably from one country to the next.

88. In accordance with the provisions of the UEMOA treaty, the Heads of State Conference included public procurement as a priority sector for which legislative harmonization is necessary to reach the goals of the Union. This decision is part of the Directive on Public Finances Management Transparency adopted 29 June 2000. A team of government officers of all Member States subsequently prepared two Directives regarding public procurement adopted in December 2005.

89. Member states had to implement these Directives by 1 January 2008. Some of the Member states have still not complied with this commitment and most of them have not put in place the necessary institutions. However, UEMOA is planning to follow up on the implementation of the Directives by the Member states and assist them in doing so, if necessary, as well as evaluate the implementation of the new procurement systems in using a standard diagnostic tool to measure the performance of the Member States in such implementation.

90. The Directives are generally viewed as including most of the best internationally recognized practices. Their adoption by the UEMOA Council of

³³ Interviews with procurement specialists. at the World Bank

Ministers allows the implementation of these principles in the eight Member States more efficiently than if such reform were undertaken separately in each member state. In addition, it will increase competition through establishing a common framework for all eight states open to all of their enterprises.

C. Lessons from the Reforms

91. *Reforms Under Crisis or Under Pressure, not in Anticipation.* The drivers for procurement reforms in Sub-Saharan Africa are diverse as illustrated by the tales of these four reforms. In Ghana and Mozambique the collapse of the earlier systems and their inability to deliver triggered the reforms. In Uganda, the reforms started under pressure from external agents, the IFIs, and the need to keep the flow of foreign assistance moving into the country. In West Africa, the spark was the common market requirement. It is quite telling that either external pressures or extreme crisis were required to nudge governments into a reform mode rather than initiatives from within the governments realizing that good governance requires a strong procurement system.

92. On a more positive note, the reform in Ghana seems to show how a determined leadership such as that of the Public Procurement Authority can press ahead with reforms even in the absence of a comprehensive public sector or civil service reform across the board that may be more difficult to achieve. Moreover, the timely and relevant support of the IFIs was critical to put it in motion. The cases of Mozambique and Ghana illustrate well how a bad procurement system can cripple the investment objectives of governments and the need to review the system against those objectives to determine whether they are helping or hindering their achievement. Finally, the experience in Uganda, without detracting from the progress made, confirms that the lack of ownership by the government limits greatly the full achievement of the reform's objectives and benefits.

93. *Reforms to Transform the Function, not Merely to Fix It.* Reforms in Sub-Saharan Africa have focused thus far mostly on the regulatory aspects and on setting up the appropriate institutional arrangements to manage the system. This was probably the right approach to start getting the basics in place. It seems however, as the poor performance of regional systems shows, that reforms now need to go beyond merely further marginal technical fixes. New laws and institutions are necessary but not sufficient in absence of the political determination at the highest level in government to demand excellence in performance. After this first phase of creation of the legal and institutional infrastructure, there is a need to go for a second generation of reforms focused on transforming the culture into one of performance excellence, compliance, and achievement of results within the law. There is evidence that unless policy makers and procurement officers see procurement as a strategic function of the government interwoven with many other areas such as financial management, fiscal discipline, good governance, and international commerce, the chances of having a system that is efficient and supportive of strategic goals are slim. Culture transformations, different from mere changes of rules and reassignment of institutional responsibilities, implies changes in values and incentives to affect

behaviors. It needs committed and value-inspiring leadership, social and political accountability, and associated clear consequences for failure to perform or for success. It also needs a very strong demand from the civil society for results. The leadership has to come from within the country to have better chances at success. The IFIs do not have the skills or the detailed social and political knowledge and influence to drive such a transformation without creating strong resistance.

94. *The Need for a Strategic Vision and Breadth of Reform.* There are traditional arguments to justify reforms to the procurement system related to significant potential savings and those associated with transparency and good governance. These continue to be valid but might not be a sufficient incentive to persuade politicians and legislatures to embark on reform. Showing the linkage of a procurement system's performance to the success or failure of a government's program is another way to promote procurement reform. This approach lends the necessary political support to reforming procurement because the reputation of the government in meeting its promises is at stake. Often an underperforming procurement system that is incapable of supporting the delivery of the government's promises frustrates the implementation of properly funded social and economic programs as illustrated in Ghana and Mozambique. Delays in decision-making, overload, incompetence, and corruption all converge to sap the achievement of worthy objectives. Therefore, there is a need for a shared strategic vision on overall objectives that the procurement system must meet. This vision and related policies must clearly link reforms to improvements in the quality of public expenditures and to the achievement of country's strategic objectives. A tactical reason for establishing the linkage is that the government is not monolithic, particularly in regards to procurement, and this is a way of aligning all institutions around the procurement reform plan. This comes out very clearly in the case of Sub-Saharan Africa where some are working hard on improving the system, but others seem not to share the same concerns or simply are not interested in change, thus becoming an obstacle to further progress.

95. *Creating an Enabling Environment and Sustainability for the Reform.* The need to create consensus and public support for a transformative reform seems obvious but one that reformers often neglect. The case of Ghana, where it took six years of intense public debate with the support of the World Bank to reach social and political consensus on the nature and scope of the reform, is a good example of the difficulties involved. Interest groups and stakeholders that are not part of the consultation process manage to influence policy makers and leaders and the media to torpedo or capture reforms. A good stakeholder analysis and strategy on how to incorporate all of them effectively is therefore necessary for making further progress. Identifying key players and bringing them to the table, as well as preparing public campaigns that plainly explain the objectives and outline the potential benefits, are a critical success factor. This includes organizing discussions and workshops with civil society organizations, the media, and professional and trade associations. All branches of government need to be committed. The experience in various countries is that when procurement is in crisis and becomes the center of attention, the lack of communication between the branches of government leads to a proliferation of initiatives competing for public support. These become difficult to reconcile and the reform efforts may collapse as each sponsor tries to defend its project in the political

arena. The reforms in West and Central Africa show how the gravitas of international treaties can align internal constituencies around the reform. Finally, there is the issue of the sustained effort required for the reform to come to fruition. Often reforms begin with great enthusiasm but efforts falter as political support erodes. Civil society has a critical role to play in ensuring a sustained pace. One option is to create a monitoring and consultative board that includes representatives of CSOs to monitor progress, help maintain public interest and pressure, and keep reforms on track.

D. The Role of the IFIs

96. *The Second-generation Reforms.* The IFIs, particularly the World Bank and the AfDB, have promoted the legal and institutional reforms that have so far been achieved in Sub-Saharan Africa. Now the question is whether the IFIs should continue perfecting the legal and institutional apparatus or embark on a program of second generation reforms that focuses on making the systems work. All indications from the CPARs are that there are still important regulatory and institutional aspects to be adjusted and fine-tuned. However, the marginal benefits of doing it might not be as big as those stemming from working on improving system performance. The IFIs could now use their influence as financiers of a significant share of public investment to help governments consolidate and further the reforms by focusing more decidedly on results. They could tie the level of assistance to measurable improvements in performance, sending a clear signal of support for those who are committed to the task. This requires the formulation of strategies to improve results and the creation of a set of relevant performance indicators, specific objectives, a monitoring mechanism, and a program for continuous (not episodic) self- and external-evaluation of performance.

97. The proposed second-generation reforms are much more difficult because of their predominantly political and behavioral nature. They need a greater understanding of the root of the problems and the reasons (political, economic, or cultural) that encourage or drive present behaviors. Preparing diagnostics of the input side of the procurement equation, and recommendations on how to improve it, is far easier than focusing on results and on the necessary transformation of behaviors and cultures. The diagnostic and evaluation tools have to be more nuanced and conceptual than mechanical. Diagnostic work and improvement strategies need to consider country differences and specificities and understand much more clearly the political economy within which procurement operates in each country. In fact there is no or minimal stakeholder analysis for the reforms in the CPARs. Sequencing of actions needs to be formulated in a way that the easier high impact changes are carried out early to gather political support for the more difficult and controversial ones.

98. Diagnostics and recommendations have been thus far standardized around four pillars,³⁴ and therefore the proposed action plans are very similar from country to country (new laws, central regulatory body, professional training, better oversight,

³⁴ These pillars are normally the legal framework, the institutional architecture, the systems' operations and management and the control system.

etc.). The diagnostic teams included almost exclusively procurement specialists and lawyers and the focus has been on the legal and institutional engineering of the systems. Perhaps this approach was necessary for the first phase of reforms. Action plans rarely suggest the sequencing, priority, or level of effort (political, financial or other) involved in implementing individual recommendations or their likely impact. The result is that the ambitious plans where all is equally urgent and important overwhelm the already weak institutions, ending in paralysis. Under the second-generation reforms, there would be a need for interdisciplinary teams to work on the diagnostics and strategy composed of procurement specialists, public sector reform specialists, public sector economists, political scientists, and perhaps change management specialists. IFIs can help in the design and promotion of performance and output indicators and can support reform champions and CSOs in organizing demand for better results and accountability. The IFIs can also tie levels of country funding to performance and can more visibly and publicly support countries or institutions that excel.

99. As pointed out in the recent World Bank report on its experiences with public sector reforms,³⁵ the Bank's work has focused mostly on the supply side of the procurement equation and the executive branch of government. Several projects include components targeted to the demand side, such as strengthening of the oversight capacity of legislatures, training for NGOs and media staff on public procurement, and financial management monitoring; but the IFIs can do more to help them play a more significant role. This focus on the supply side is understandable given the political sensitivities involved. However, organized civil society groups can express demands for good procurement and accountability by public officials more pointedly than can international bureaucrats or a periodic election. Reform-committed governments should have no objection to the Bank engaging and supporting CSOs more substantially to play this role. IFIs can also help by including CSOs in their own procedures when country systems are not used, and by requiring their involvement where formal institutions do not reach or do not function well. Developing a more detailed strategy to work on the demand side of procurement, which is beyond the scope of this paper, is in line with the desire of the IFIs for better procurement performance.

100. *Second Generation CPARs.* Developments in the procurement field in Africa thus far point to the need for a rethinking of the present approach to the CPARs. CPARs organized around legal, institutional, operations, and controls are fairly standardized across all countries. This model has helped much in organizing and providing uniformity of assessments and was well suited to get the fundamentals in place in most countries. The model also focused strongly on the structure and the input side of the system but not much on its performance. Moreover, the model does not explicitly consider how the political economy and the interests of different actors impact on that performance nor how well the system supports or hinders the attainment of government economic and social goals or how public procurement interacts or depends on other government functions.

³⁵ Public Sector Reform: What Works and Why? – An IEG Evaluation of World Bank Support - The World Bank, 2008

101. Based on the findings of this paper, the Sub-Saharan experience suggests that future CPARs need to exchange the rigid existing model for an instrument tailor-made to the needs of each country. The CPARs need to migrate to an “issues and opportunities” paper with government policy makers as its main audiences. Private firms and civil society could be the next most important audience. The IFIs should take third precedence as an audience and use the new tool to promote a dialogue with the countries on opportunities for IFI support. The paper should offer policy makers strategic advice, sequencing of specific interventions and clear justifications with a sharp analysis of the priorities, likely degree of implementation difficulty (political, institutional and technical) and potential impact on the system. The focus of the new CPARs must be now more on system performance and results than on structure, including how to promote behavioral changes by the actors (government officials at all levels, politicians, private firms and civil society). There are still input activities that need to be carried out to enable better performance as indicated earlier in this report. These are critical and should not be neglected. Furthermore, there is a need to keep an eye on the structure of the system to make sure that it is still apt to operate under ever changing market and social demands. Procurement systems are not to be treated as static, and the new CPARs should focus on these evolving demands.

102. Developing the new scope and nature of the second generation of CPARs and its detailed terms of reference is beyond the scope of this paper. However there are some areas for further work by the IFIs to enable a stronger focus on performance, for example:

- a) Develop a set of relevant performance indicators including baskets of products of standard specifications for price comparison across sectors, agencies, or countries
- b) Develop score cards to collect input (CSOs and firms) on timely processing of procurement and public perceptions of efficiency, competence and integrity of different agencies
- c) Develop and promote simple methodologies for calculating cost saving of alternative procurement strategies for agencies
- d) Develop surveys for firms to report premium added to their prices to cover different risks of doing business with the government for (or likely discounts for mitigation of such risks)

Finally, it is necessary to come up with new guidelines for second generation CPARs with emphasis on performance reviews. They should include detailed stakeholder and political economy analyses of the proposed interventions, stronger focus on involvement of CSOs, and guidance for the composition of the teams to be deployed to help governments carry out the reviews. The key objectives of future sector work should be to empower governments by furnishing them with the necessary tools for continuous monitoring and performance analyses that result in a sustained improvement of the systems.

IV. Conclusions and Going Forward

103. Sub-Saharan African countries have made considerable progress in creating a legal and institutional infrastructure on par with international standards to support efficient procurement system. The IFIs played a critical role in promoting the creation of this infrastructure. Admittedly, some laws and regulations still need fine-tuning to eliminate deficiencies that might compromise the efficiency of the system. Governments should not abandon this task because maintenance of the system has become an ongoing task. The UNCITRAL model law, after which most national laws have been modeled, permits this continuous adaptation to a changing environment without creating instability or unpredictability of the entire system.

104. The IFIs promoted a standard institutional model comprising a central regulatory agency body and decentralized implementation of procurement by the different ministries and government agencies. This model devolves responsibility for procurement management to those that are in a better position to assess their specific needs and makes them accountable for results. However, unless parallel efforts to create capacity and establish adequate controls to support the decentralization model are in place, it may result in inefficiencies and the creation of opportunities for abuse. Unfortunately, this capacity enhancement effort has not happened as an intrinsic part of the reforms in the region. Institutions created as part of the reforms have weak operational and technical capacity. In most cases, they lack the influence and the ability to play a significant role in policymaking and coordination of regulations issued by different agencies that may have an impact on procurement. Going forward, the strengthening of these agencies is critical because otherwise they might become irrelevant, fall captive of political vagaries and lose credibility and effectiveness that will set back the results that have been achieved.

105. The causes for continuing poor performance after the huge effort made in the creation of the legal and institutional infrastructure are multiple. The lack of technical procurement skills is one of the most prominently reported in the CPARs. Procurement officers have not been competitively appointed or promoted based on their knowledge and good performance, but mostly for their connections or political influence. Sustainable regular programs to supply and retain competent officers are lacking. Dissemination of the new laws and regulations and tools to apply them – such as manuals, model bidding documents, and expert assistance to officials and private sector – has not happened. An intense effort to disseminate the regulations is necessary and could be contracted out. In the longer term, countries need to develop and implement professional education and certification programs for procurement specialists and managers together with an appropriate civil service career that enables competitive selection and merit-based promotion of skilled personnel. The program should include upgrading skills and continuing education for the incumbents and the identification or creation of professional training and educational programs.

106. The lack of a compliance culture throughout the region is reinforced by the extremely weak controls. The lack of incentives to modify the culture and the behavior of public officials exacerbates the inefficiency of the systems. Intentional

violations of the law are generally inconsequential and even citizens' reports of corruption filed with the designated agencies meet with inaction or even indifference. This is at times the consequence of weak investigative and prosecutorial capacity in these agencies. Therefore citizens tend to view these agencies as empty shells created only to give the appearance that something is being done about corruption in procurement. Unless there is genuine political commitment to hold officials accountable for good results, integrity, and compliance with the law, the public will become more and more alienated and cynical about the subject.

107. There is a need for a unified vision and quest for good performance at the highest level of government and for the creation of incentives that modify behaviors. The need to perform must be tied explicitly to the achievement of the strategic goals of the country. This is the aligning element for all involved in procurement throughout the government. This requires setting performance and managerial standards as benchmarks for the system and clear accountability for meeting them. The dearth of information and the lack of good recordkeeping may come in the way of collecting performance information. Even though these informational deficiencies are impossible to correct overnight, it should be possible to develop ad hoc critical performance indicators (e.g. similar to those in the OECD methodology for assessment of public procurement systems or comparisons with well performing systems elsewhere) and associated rewards and penalties to encourage a culture of good performance amongst the officialdom.³⁶ The application of the indicators can start with critical agencies and gradually be perfected and expanded to include others.

108. In some countries in other regions the government has entrusted and respected NGOs interested in the procurement field with the preparation of score cards for public agencies on the basis of simple independent surveys and collection of basic data. The surveys obtain data and perceptions on efficiency of services, attitude of public officials, time cycle for procurement, perception of integrity, and competence of procurement management. Newspapers with large circulations publish these reports. The demonstration effect rapidly establishes a healthy sprit of competition among public sector agencies and a desire to be on top of the list. Finally, IFIs could use their leverage more effectively by tying their levels of lending to meeting specific performance indicators in public procurement. In fact, poor procurement performance is diminishing the effectiveness of development aid, making it harder for IFIs to disburse through government systems. It is remarkable and hard to explain that all the CPARs report that projects financed by the World Bank and following World Bank financing rules perform better than the rest of the public programs but the same implementing agencies do not perform when they use government funds.

109. The most powerful incentive to promote political accountability is an inquisitive and demanding civil society. Unfortunately, there are obstacles to a more active involvement of CSOs. Many countries still do not grant the right to information; and where it is granted, it is not supported by strong records management and information collection and retention policies. Development

³⁶ OECD Methodology for Assessment of National Procurement Systems (Version 4), July 17, 2006 – Available at http://www.oecd.org/document/40/0,2340,en_2649_19101395_37130152_1_1_1_1,00.html

institutions have given uneven attention to the potential of CSOs in oversight and in promoting a procurement improvement agenda. Promoting an agenda for CSOs and supporting them is an area where the international development community can do more work with reform-minded governments in the region. With appropriate budget and technical support, CSOs can contribute to diagnosing weaknesses and strengths of country systems and make recommendations for improvement. Encouraging faster progress in good legislation for the right to information, better record management, and educating key actors in the basic aspects of procurement and oversight should be a critical part of the second generation reforms. As there is no explicit and strong demand for good procurement, controls are lax and irregularities go unpunished. Those in power do not see a need to be responsive to an inexistent demand.

110. A lack of information impedes proper monitoring of the system and analytical work to define needed adjustments. Consequently, decisions on revisions to the system will be made on a trial and error basis that creates uncertainty. Creating proper management information systems for national procurement will take years but the foundations need to be built now designating basic data that can be collected either electronically or manually starting with a few institutions. These would show policymakers, politicians and the public the value of information and encourage them to implement new systems.

111. Based on this review, the following areas would require attention going forward to consolidate and reap the benefits of the accomplishments thus far:

- Countries need now to focus strongly on performance of their procurement system. IFIs can support this process by helping develop country specific strategies that include stakeholder analyses; development of performance indicators and clear, realistic objectives; and incentives to change behaviors and cultures. Performance indicators should then be used to fine-tune regulations and practices. IFIs could support the implementation of these strategies as self-standing projects or as part of a broader public sector modernization. IFIs could also link lending levels for other purposes to progress in procurement and financial management performance.
- Strengthening the oversight role of civil society is necessary to put politicians and government agencies on notice that if they want to stay relevant they need to deliver as promised. Behavioral changes will not occur unless the CSOs are ready to denounce poor performance and prize excellence, and reward or penalize them accordingly through the electoral process. However, freedom of information legislation adequately backed up with regulations on records management and friendly government reports to society are prerequisites. CSOs can also be encouraged to start working and pushing harder for these two necessary elements of openness.
- Developing institutional, operational and human technical capacity that includes two phases. The first phase is a ramping up effort to create the conditions to attract and hold good procurement managers

and officers and to improve procurement literacy at all levels. The second is a maintenance phase once the supply of trained officers reaches a steady state of acceptable performance. A critical component of this program is training members of sub-national tender boards and the creation of tool kits to help officers at the district level handle the most common procurements that they carry out.

- Integration of financial and budget management and procurement operations is a high priority and must be a standard part of the country strategies in public financial management. This integration is a precondition to improve performance significantly, even though success probably requires a substantial information/technology upgrade in most countries.
- Even though e-GP is in its infancy in Africa, a properly sequenced intensification of its use would go a long way in showing the advantages of using technology. Initially it could include modest achievable objectives (e.g. simple posting of bidding opportunities, laws and regulations, contract awards, procurement plans, etc. for selected agencies). It could also provide friendly information to enhance competition and transparency.

112. The findings of this review indicate that Sub-Saharan countries in Africa and their development partners are facing a daunting task going forward to make their procurement systems in place work better. The issues hindering better performance involve matters of overall governance culture, changes of behavior by the participants in the process and a changing the mindset of the politicians and country leaders. Affecting these matters and generating momentum transcend the procurement field and therefore might need to be framed as part of wider state modernization programs. Effective participation by civil society that could help in this transformation is not possible without good records and the right of the public to access them, recruiting and retaining better procurement professionals might be unfeasible without a good civil service system. However, there are examples of successful interventions within the procurement field like the creation of a professional service in Ghana thanks to the determination and forbearance of the Public Procurement Authority. The fact that most countries with the support of the IFIs were able to enact modern legislation amidst generalized disarray elsewhere gives hope that the procurement system can be a good demonstration laboratory for further reforms. The challenge now for the IFIs is to identify willing governments and champions in Africa and help seize opportunities to formulate and implement strategies to move forward the second-generation reforms.