

Gender, Trade and Public Procurement Policy

Kenya, India, Australia, Jamaica

Raymond Mark Kirton



The Commonwealth

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Foreword

This research, which explores the nexus between trade, gender and public procurement policy, investigates how inclusive government procurement policy, coupled with the effective management of scarce resources, can accelerate sustainable economic outcomes. Government procurement is an important dimension of international trade. The procurement market often makes up 10 to 15 per cent of the GDP of developed countries and up to 30 to 40 per cent of the economies of least developed countries (LDCs). Given the size of government spending, public procurement has the potential to be a useful policy tool for growth and the socio-economic transformation of a country. An inclusive government procurement policy exists where there is a 'level playing field', in which policy and regulations ensure that there is equality of opportunity in the pursuit of contracts; especially the size of the enterprise alone should not unwittingly exclude businesses from competing. However, there is limited gender differentiated data available on government contractors. This suggests that policy-makers are unlikely to know the extent to which women entrepreneurs, many of whom own or run small or medium-sized businesses are able to successfully win government contracts. Only a handful of Commonwealth countries have designed public procurement policies which provide special derogation for competing companies based on gender (or ethnicity, for racially-polarised countries).

As Commonwealth nations seek new opportunities to accelerate their socio-economic development, they are increasingly being challenged to explore innovative approaches to do more with scarce resources. International trade as a vehicle for pro-poor growth continues

to be championed in mainstream circles as a good route for countries to trade themselves towards economic prosperity and development. Yet, it is recognised that international trade and (its natural ancillary) enterprise development, alone are not sufficient to ensure that the benefits of trade are automatically transmitted to poor people at the bottom of the economic pyramid. Targeted policies that widen poor (or disenfranchised) peoples' access to the factors of production, complemented with frameworks that support knowledge creation have greater potential for accelerating pro-poor economic growth.

This Commonwealth research is timely, as the drive to include public procurement in a universal World Trade Organization (WTO) agreement will undoubtedly accelerate in the coming decades. The extent to which gender considerations will form a backdrop to the negotiations remains to be seen. Past precedent does not ensure that there will be explicit consideration of the implications of a global trade agreement for gender equality in public procurement. Nevertheless, it is hoped that gender specialists, feminist economists and many more development economists championing pro-poor development will seize the opportunity to make the case for gender responsive public procurement policies in the global arena. Most significantly, policy-makers with a vision for change will be central to re-orienting the public procurement policy regime as this offers an innovative distribution of resources and economic opportunities and has the potential for enhancing competitiveness.

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Abbreviations and Acronyms

ADB	African Development Bank
ADF	African Development Fund
AfT	Aid for Trade
ASEAN	Association of South East Asian Nations
BGA	Bureau of Gender Affairs (previously BWA), Jamaica
BRICS	Brazil, Russia, India, China and South Africa
BWA	Bureau of Women's Affairs, Jamaica
CARIFTA	Caribbean Free Trade Association
CET	Common External Tariff
CPPN	Commonwealth Public Procurement Network
CSO	civil society organisation
CVC	Central Vigilance Commission
DFID	Department for International Development
EPA	Economic Partnership Agreement
EU	European Union
FDI	foreign direct investment
FTA	free trade agreement
GAC	Gender Advisory Committee, Jamaica
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GBV	gender-based violence
GDP	gross domestic product
GNP	gross national product
GPA	Government Procurement Agreement, WTO
IDB	Inter-American Development bank
IDS	Institute of Development Studies
IMF	International Monetary Fund
IT	information technology
JLP	Jamaica Labour Party
KANU	Kenyan African national Union
KIT	Koninklijk Instituut voor de Tropen (Royal Tropical Institute), Amsterdam
LDC	least developed country

MDG	Millennium Development Goal
MFN	most favoured nation
MNC	multi-national company
MoU	memorandum of understanding
MSME	micro, small and medium-sized enterprise
MSME	Ministry of Micro, Small and Medium Enterprises, India
MTWO	Maendeleo ya Wanawake, Kenya
MWCD	Ministry of Women and Child Development, India
NGO	non-governmental organisation
NPGE	National Policy for Gender Equality, Jamaica
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OECD/DAC	OECD Development Assistance Committee
PATH	Programme for Advancement through Health and Education, Jamaica
PNP	People's National Party, Jamaica
PPOA	Public Procurement Oversight Authority, Kenya
PPP	public procurement policy
PTA	preferential trade agreement
SSA	sub-Saharan Africa
STPD	Social Transformation Programmes Division
TNC	trans-national corporation
TRIMs	Trade-Related Investment Measures
TRIPs	Trade-Related Aspects of Intellectual Property Rights
TRRI	Tariff Trade Restrictiveness Index
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNCAC	United Nations Convention against Corruption
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

Summary

Public procurement is increasingly being recognised as a vehicle to help governments to achieve social goals and sustainable economic development. Within the Commonwealth, South Africa and Malaysia are two examples of countries where public procurement policy has been used to empower previously disenfranchised populations and thus pursue the goal of equitable sustainable development. Government procurement programmes, largely in member countries of the Organisation for Economic Co-operation and Development (OECD), attach additional conditions to government contractors, designed to raise environmental and/or social standards. These conditions include improvement of women's rights. Unlocking government procurement for businesses owned by women could be one route to using trade as a vehicle for increasing the benefits of economic development for women. Policy-makers continue to make the case that if inclusive, accelerated GDP growth is to be achieved, women's economic empowerment must be embedded in our communities. Yet, governments are not alone in this drive towards unleashing the potential of women business owners in the supply chain. We are at a time of significant global demographic change, which is driving major multinational corporations to create new opportunities for women as leaders, managers, employees and agents of change and value, both as suppliers and consumers. This is not least because the business case for engaging with a powerful consumer is so convincing.

Defining the nexus of gender, trade and public procurement

This publication explores the interconnectedness of gender, trade and public procurement in four steps. These are:

- i) an exploration of the linkages between public procurement and trade, with specific reference to domestic, regional and global dimensions of trade;
- ii) a discussion around the extent to which public procurement policies are gender equitable;
- iii) a consideration of the importance of integrating gender considerations into public procurement and trade policy.
- iv) Lastly, the publication presents four case studies on public procurement policy and practices taken from Commonwealth countries, with a particular emphasis on emerging gender-specific dimensions.

What are the objectives and benefits of a well-functioning public procurement policy?

The key objectives of public procurement policy are to define an efficient, transparent system which enables governments to procure value-for-money goods and services in order to run the day-to-day business of government. It is now largely recognised that the benefits of competition and transparency to the procurement process cannot be denied. Studies carried out in the European Union (EU) by the World Bank and the OECD suggest an overall cost saving of 30 per cent¹, due to avoiding wasteful, incompetent or corrupt purchasing of goods and services.

Why does gender matter for public procurement policy?

Government procurement is an important dimension of international trade. The size

¹ Commonwealth Secretariat (2011), Trade Effects of Rules on Procurement for Commonwealth ACP Members, Commonwealth Secretariat, London: xiv.

of the procurement market, which often makes up 10 to 15 per cent of the GDP of developed countries² and can amount to as much as 30 to 40 per cent of GDP of developing countries³, is thus a major factor in economic activity. How this segment of domestic trade is explored to serve women and men more equitably is an overarching concern. Given the magnitude of government spending on goods and services, public procurement can be an extremely useful policy tool for a country's growth and socio-economic transformation. Gender is important for public procurement policy because it can ensure equitable access and provide benefits from diversifying the supply chain. Increasing the opportunities for more economic agents, particularly small and medium-sized enterprises (SMEs) to engage in the delivery of goods and services can result in improved outcomes for the alleviation of poverty and increasing gender equality, given that women-owned businesses are disproportionately located in this sub-sector of the economy.

Can support to SMEs be an entry-point for gender-equitable PPP outcomes

Expanding the participation of SMEs in the tendering process has a number of advantages for poverty reduction, gender equity and sustainable development. Empirical evidence from around the globe confirms that SMEs are largely labour-intensive, low-technology or low-capital equipment enterprises in contrast to larger

businesses.⁴ Therefore, a fast-growing SME sector has great potential for reducing unemployment.

Where does the private sector fit in?

The private sector has a key role to play in increasing access to government procurement contracts. This role is encouraged by development agencies and bilateral aid donors. Multinational corporations, large domestic companies and medium-sized enterprises that are interested in increasing their customer base are exploring new opportunities to engage with smaller suppliers. The language of the private sector focuses on diversifying supplier value chains in the market. From global supermarkets, car manufacturing conglomerates, textile manufacturers and service sector enterprises, the practice of supplier diversity⁵ continues to resonate. This trend has potential for promoting an inclusive approach that targets female suppliers.

What are the challenges?

Positive discrimination is not widely understood or welcomed

Governments are often reluctant to explore positive discrimination or affirmative action. These concepts are

2 World Trade Organization (WTO) (2013), 'Government procurement', WTO, available at: www.wto.org/english/tratop_e/gproc_e/gproc_e.htm (accessed 21 May 2013).

3 International Institute for Sustainable Development (IISD) (2013), 'Procurement & Public-Private Partnerships', IISD, available at: www.iisd.org/procurement (accessed 21 May 2013).

4 Cook, P and F Nixon (2000), Finance and Medium-Sized Enterprise Development, Working Paper No 14, IDPM, University of Manchester, Finance and Development Research Programme, http://unad.academia.edu/AdejubeWorldgreatest/Papers/602216/Finance_and_small_and_mediumsized_enterprise_development (accessed 21 May 2013).

5 Supplier diversity is the pro-active business process of sourcing products and services from diverse and previously under-represented suppliers. Diversifying their supplier base helps governments and large companies to effectively target a wider range of businesses in order to gain business benefits including increased market share. By broadening the diversity of their supply base, both public and private sector companies can benefit from access to new, innovative ideas, increasing competition, receiving better value for money and improved service to the customers and communities they work with.

not widely understood and consequently often feared by vested interests, both domestically and internationally.

Women are often in the margins of decision-making processes

Women business owners with some understanding of the challenges of business development often reside in the margins of decision-making processes. This makes it challenging for their views to be heard and to influence agendas. This marginalisation of women's knowledge and key skills is evident in governance institutions and processes at all levels, including among civil society organisations (CSOs). The scarcity of women in leadership positions⁶, whether in the boardroom (at every level and scale of enterprise) or in executive positions in government and public institutions, reinforces the absence of women where it matters most for gender-responsive economic empowerment.

Defining a gender-sensitive public procurement policy requires political will

Exploring the development of a gender-sensitive public procurement policy presents a challenge for governments because of the pressures to maintain the status quo, which supports existing modes of operation. In the first instance, challenging entrenched viewpoints requires open engagement and dialogue on 'why the need for change?' Such engagement allows all actors/agents to discuss the context in which affirmative action may be recommended to address the issues of commonplace 'lack or limited opportunity' for women business owners. Experiences from around the globe, including Commonwealth countries, indicates that affirmative action is more readily acceptable where there is a historical reference to past discrimination. In a number of countries, past (often legally instituted)

discrimination has eventually conceded to a willingness to discuss and construct laws, regulations and policies which protect the rights and opportunities of previously disadvantaged communities distinguished by ethnicity, religion or caste. This is seen in post-segregation USA, Malaysia, India and post-apartheid South Africa.

Challenging mindsets

The goal of this publication is to raise questions on how policy-makers can start to push the boundaries of what has been accepted as good practice in public procurement policy. Exploring this discourse will necessarily challenge key specialists – governance advisers, economists, social-policy advisers, trade lawyers, gender experts, etc. – to question the appropriate balance for a workable, transparent and efficient public procurement policy within the parameters of a global economy, and with the aspiration to the development of an inclusive economy.

6 Dyrchs, S and R Strack (2012), Shattering the Glass Ceiling: An Analytical Approach to Advancing Women into Leadership Roles, The Boston Consulting Group, available at: www.bcgperspectives.com/content/articles/leadership_change_management_shattering_the_glass_ceiling (accessed 21 May 2013).

Chapter 1

Introduction

Box 1.1 What is 'public procurement'?

According to the United Nations Commission on International Trade Law (UNCITRAL) Model Law 1994, public procurement refers to 'the acquisition of goods, construction or services by a procurement entity.'⁷ Government spending accounts for 15 per cent of the GDP of OECD countries and is as high as 30 per cent of GDP in developing countries (UNEP 2009). From a trade perspective, public procurement policy (PPP) is important because it commands a significant share of GDP and, because 'public resources are scarce, the efficiency of the procurement process is a primary consideration of every procurement regime' (WTO 2013). Yet, for the best long-term use of government funds, PPP should also be concerned with sustainable development. International norms and values also dictate that public procurement policy should be of a particular standard and should be largely recognised as complying with 'good governance' standards (Brody 2009).⁸

7 The UNICTRAL Model Law on Public Procurement contains procedures and principles which are aimed at achieving value for money and avoiding abuses in the procurement process. The text promotes objectivity, fairness, participation and competition and integrity in working towards these goals. Transparency is also a key principle, allowing confirmation of visible compliance with the procedures and principles.

8 Good governance is broadly defined as 'well-functioning and accountable institutions – political, judicial and administrative – which citizens regard as legitimate, in which they participate in making decisions that affect their daily lives and by which they are empowered.' In the context of PPP, good governance principles suggest the existence of a system which is efficient, accountable, transparent, anti-corrupt, good value for money, fair and equitable.

1.1 Public procurement policy: A framework for delivering public goods and services

Public procurement policy (PPP) typically focuses on 'value for money', transparency, accountability and anti-corruption and these angles have been extensively analysed from a governance perspective. Government agencies consider it appropriate to focus on efficiency in the procurement of goods and services because they require products and inputs to carry out their day-to-day activities, timely delivery of programmes and services to their constituents. The extent to which governments are able to carry out their duties in a timely, effective and efficient manner has a great impact on a diverse range of stakeholders and society in general.

The 'value for money' consideration of public procurement acknowledges that public resources are scarce, requiring efficient supply of goods and services. The dissemination of information is a primary concern. An open and transparent procurement system is considered to be the best approach to realise the 'value for money' criterion, as transparency negates imperfect information flow and is perceived to maximise competition between potential suppliers.

Notwithstanding the drive towards openness and transparency, in many instances WTO member countries are able to use their purchasing power to achieve domestic policy goals, although this might not be formalised and systematic.

The majority of the member countries of the Commonwealth are developing nations, thus the developing world's view of public procurement is relevant to the Commonwealth, as perceptions and beliefs



of this large constituent will influence emerging global agendas on trade and public procurement. Transparency is one of the three areas of WTO work on government procurement. In discussions, developed countries have focused on the positive benefits of an agreement on transparency, such as greater efficiency and a reduction in corruption. However, many developing countries are reluctant to agree, worried about the intrusiveness of such a policy and the burdensome obligations and limitations that such an agreement could place on the use of procurement as a tool for development.

This publication raises the question of whether a well-conceived public procurement policy can be designed to infuse crucial governance and efficiency issues into procurement while still serving as a good channel for transmitting equitable, inclusive and sustainable development.

1.2 Understanding the linkages between gender, public procurement and trade

According to an authority on human rights law and European Commission (EC) public procurement law, 'the use of public procurement to achieve social outcomes

is widespread... [including]... its use to promote equality on the basis of ethnicity and gender' (McCrudden 2004). While closing gender gaps is a matter of human rights and equity, it is also one of efficiency. According to the World Economic Forum's Gender Gap Report there is a positive correlation between gender equality and a country's level of competitiveness, GDP per capita and its rank in the Human Development Index. This is consistent with evidence that reducing gender inequality enhances productivity, economic growth and development. Globalisation has brought new challenges and has major implications for gender equality, with sourcing no longer a local or national process; there are now good opportunities for women business owners to sell into (public and private) global supply chains. The extent to which governments make a concerted effort to design public procurement policies which increase access for women business owners in turn determines the extent to which those entrepreneurs will respond. From a low starting point, it takes huge organisational will to increase the participation of women in government procurement supply chains for goods and services.

1.3 What questions does this paper address?

The methodological approach used to explore the questions posed in this report includes an assessment of the current discourse on public procurement policy, an analysis of secondary research data and primary research, and analysis of interview results from procurement officers. The insights of procurement officials illustrate their priorities to the non-specialist. This is important for exploring practical solutions and opportunities for increasing access to economic opportunity. Ideally it would have been useful to have also included the real life experiences of women business owners, in order to illustrate the barriers they faced when competing for business from government agencies. Unfortunately, this important dimension could not be covered within this study and deserves a paper on its own.

1.4 Who is the target audience for this report?

This report is primarily aimed at policy-makers and senior officials of procuring institutions within the public sector. Researchers interested in exploring issues of private sector development, the enabling environment and governance of public institutions may also find the report useful to their work.

1.5 Scope and structure of the report

The purpose of this report is to capture the linkages between gender, trade development and public procurement policy, identifying how inclusive government procurement policy, coupled with effective management of scarce resources, can accelerate economic sustainable outcomes for poor and socially excluded economic agents. Exploring these linkages from a gender perspective will further increase our knowledge and enrich the resource pool for gender and trade specialists.

Chapter 1 sets the context, definitions and guiding framework for public procurement policies.

Chapter 2 focuses on an overview of public procurement, trade and gender and offers a conceptual background on their inter-linkages.

Chapter 3 explains the global government procurement architecture in the context of gender and trade on the domestic, regional and multilateral levels.

Chapter 4 focuses on good governance and public procurement, providing insights into the notion of good governance and its interface with public procurement.

Chapter 5 presents overviews of four Commonwealth countries (Kenya, India, Australia and Jamaica), focusing on their experiences in improving procurement processes for an expanding range of businesses, including those owned by women.

Chapter 2

An Overview of Public Procurement

The efficiency of public procurement policy affects the entire public sector. Differences in style of government, the choice of economic system, and even cultural norms can influence the practices accepted within the realm of public procurement. As a result, an overall international standard has been elusive. However, attempts are being made to standardise public procurement practices worldwide. One example is the model law on procurement generated by the UN Commission on International Trade Law (UNCITRAL) (OECD/DAC and World Bank 2005).

Any such attempt at harmonisation of procurement policy on a large scale has numerous challenges. Some are specific to developing countries. In a roundtable discussion put together by the Development Assistance Committee of the OECD (OECD/DAC) and the World Bank on 22 and 23 January 2003 in Paris entitled 'International Benchmarks and Standards for Public Procurement Systems', concerns specific to developing nations were addressed (OECD/DAC and World Bank 2005). The issues identified were: improving performance measurement, implementing and increasing the use of monitoring and evaluating tools where necessary and developing capacity geared specifically to helping to improve public procurement systems. The purpose of the roundtable was 'to introduce a new initiative and identify the operational challenges of moving forward to work with our client countries and with bilateral and multilateral donor partners in developing a system of benchmarks and standards for performance measurement of Public Procurement Systems' (OECD/DAC and World Bank 2005). Concerns about public procurement policy within developing nations, and indeed globally, should not be

viewed as recent developments. As noted by the 2003 roundtable, since the 1980s there have been attempts to harmonise public procurement practices with the recognition that there were benefits to be realised in the areas of governmental and developmental objectives. As a result the parties at the roundtable determined that what was needed was an adherence to principles, namely maximising economy and efficiency, open participation, competition, fair and equitable treatment, accountability and transparency.

In the international arena there is widespread recognition that meaningful progress in increasing harmonisation has been hampered for a long time. One barrier has been the challenge of unrealistic goals set for developing countries. Another factor for the incremental approach has been the lack of necessary institutional capacity at the international level and few incentives to encourage its improvement. The roundtable did not consider the influence of cultural factors that certainly affect progress towards global standards of 'good governance'. Another consideration can be linked to advancements in technology: public procurement policy must be reviewed in the context of increasingly popular e-procurement transactions (EC 2010). Harmonisation continues to be extremely elusive due to its inherent complexities. Although a degree of political will and commitment are required on a national level, because of its complex nature, there is a call for bilateral and multilateral approaches. This affects the way forward in two areas. First, it increases decision-making because more information is under consideration with the addition of relevant stakeholders. On the other hand, if consensus is elusive, or if



certain areas are sensitive, debate may prove to be time-consuming and thus contribute to incrementalism, albeit from a new source. This is demonstrated by the increase in economic partnership agreements and bilateral trade agreements which take public procurement into consideration.

Public procurement is important because it affects public expenditure. In 2000 it was estimated that public procurement as a percentage of gross national product (GNP) ranged from 10 to 30 per cent (Callender and Matthews 2000). More recent estimates from UNCITRAL note that procurement can sometimes consume as much as 50 per cent of GNP in some countries. It is evident that increasing the efficiency of public procurement practice would positively affect the productivity of nations, particularly those for whom public procurement comprises a larger portion of their GNP. Past attempts at global harmonisation of policy, in any forum, have tended to favour the concerns of developed countries rather than those of the developing world. And within all countries there is still some question as to how the economic status of business owners affects their ability to secure public

procurement contracts. Notably, PPP has generally tended to either exclude women or minimise the impact that policies will have on them. Of particular concern here is the level of access that women have to the arenas of decision-making.⁹

⁹ See, for example, www.un.org/events/women/iwd/2006/IWD2006backgrounder.pdf (accessed 21 May 2013).

Chapter 3

Trade, Gender and Public Procurement

3.1 Trade and gender

Gender equality is 'a universal goal that is enshrined in many international instruments such as the Charter of the United Nations, the Universal Declaration of Human Rights (1948) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 1979' (UNCTAD 2004). Adding a gender dimension to public procurement and trade issues represents a commitment to achieving gender equality where it matters most – in policies governing the flow of economic resources. However, a gap remains between *de jure* and *de facto* implementation of a gender component in trade and public procurement policy, as well as in the success of these efforts to achieve the stated goal of gender equality.

A body of literature suggests that international trade, though primarily an economic phenomenon, has significant effects on sustainable development. Many researchers agree that although trade can be an engine for economic growth and development, there is no automatic transmission mechanism or direct causal relationship between trade and human development.¹⁰ In order to ensure that trade results in net benefits for nations, particularly developing nations, there must be systematic efforts to align the global multilateral trade regime with human development goals, including gender equality.

The multilateral trade regime cannot be discussed without first focusing on the World Trade Organization (WTO) and the agreements that form its mandate. Since the creation of the General Agreement on Tariffs and Trade (GATT)¹¹ in 1947, and the formation of the WTO in 1994, global trade has continued to expand, and with it the expected benefits of economic growth in the global economy. In recent decades trade liberalisation has taken on trade in services and what is now referred to as 'WTO-plus' which commits member states to policy changes in investment and intellectual property rights. The WTO's expansion into General Agreement Trade in Services (GATS), Trade-Related aspects of Intellectual Property Rights (TRIPS) and Trade-Related Investment Measures (TRIMS), and the rulings of the Dispute Settlement Body have had far-reaching implications for domestic policy-making and governance in countries around the world. Furthermore, in addition to the encroachment on sovereignty and governance that the multilateral trading regime now poses, disagreement over agricultural subsidies, non-tariff barriers and industrial tariffs at the Doha Development Round of trade negotiations has stalled progress in advancing the WTO agenda of further trade liberalisation.

At the heart of the disputes at the Doha Development Round is the issue of equality between and within countries. It

10 Human Development focuses on what 'development' and progress means to people and communities as an end goal. Human development attests that development should be about creating nations in which people enjoy long, healthy, creative lives in the context of a reasonable standard of living. See <http://hdr.undp.org/en/statistics/indices>

11 The General Agreement on Tariffs and Trade is the precursor to the World Trade Organization.

is apparent to all that trade liberalisation has many outcomes for both countries and their citizens. However, outcomes are rarely uniform or fair. Trade has a differentiated impact on nations, groups and individuals. The benefits accrued from trade liberalisation are affected by a person's socio-economic background, gender, class, ethnicity, skills, cultural normative values and education, among other factors. Therefore, when considering gender and trade, the impacts of trade on men and women can be substantially different because they commonly work in different sectors and have different skill sets.

The UNCTAD report *Trade and Gender* (2004: 16) summarised the ways in which trade can affect gender equality:

- A positive or negative impact on growth and employment opportunities;
- Competitive pressures, which may reduce or encourage gender discrimination, in particular wage differentials;
- Facilitating or raising barriers to access by women to resources and services; and
- Multilateral trading rules, which may facilitate or constrain governments in applying policies or regulations that address gender inequality.

With increased competition from international competitors, female employment within a country increases. This may be attributable to the need for more flexible, low-wage workers (especially for labour-intensive export-oriented industries such as textile exports in Bangladesh) for which women fulfil the criteria. Furthermore, trade liberalisation not only changes the composition of the workforce but also working conditions which do not always change for the better. Many women in the developing world work for transnational and multinational companies (TNCs/MNCs) that use them as cheap, non-unionised labour, often in unsafe working conditions. The other negative aspect of women's increased participation in the formal labour sector is the resulting neglect of care services that women would usually carry out for their families (children, the elderly and the infirm).

The complexity of the issue is increased because the majority of the women in the developing world who enter the formal workforce in low paid, sometimes temporary, labour-intensive jobs, earn more in these jobs than they would in their traditional roles (World Bank 2004). Thus, in some cases women earn more cash income as a result of trade liberalisation. Such a cash income for many women in patriarchal societies typically leads to greater bargaining power in the home, financial independence and an improved standard of living. On the other hand, this does not mean that inequalities do not persist. These inequalities are most recognisable in 'wage gaps, job segregation and poor access to basic services for women' (UNCTAD 2004). Anecdotal evidence also shows that upward mobility, accessed via increased earning potential and power, can lead to gender-based violence (GBV).¹² In addition, it is only when assessing their remuneration and working conditions comparatively with their domestic male counterparts or female counterparts in the developed world, is the inequality of their situation revealed.

Women's participation in the workforce has always been significant when taking into account the unremunerated domestic labour that women perform in their homes and in subsistence agriculture. Even so, globally their work in the formal sector has increased steadily over the last two decades (UNCTAD 2004). Some of this increased participation in formal labour is attributable to the effects of trade liberalisation.

Ultimately, whether trade liberalisation leads to higher employment for women throughout the world, the quality of this work, the fairness of their wages and the safety of their working conditions, as well as factors external to trade have a more significant impact – mainly their qualifications, skill set and education. Without qualifications women will continue to be relegated to lower paying, less secure

¹² As discussed at gender-responsive budgeting workshops organised by the Commonwealth Secretariat from January–March 2012.

and potentially hazardous jobs than their skilled (and to a lesser extent unskilled) male counterparts.

Theoretically, trade has been put forward as 'gender neutral'. The factors of production necessary for trade are land, labour and capital, and this labour is not usually segregated (Coche et al. 2006). Yet a deeper exploration could provide some insights into how trade is affected by gender relations. From the perspective of labour, there is segregation across and within industries. Indeed, increased automation and the use of machinery have resulted in an increasing presence of women in the labour force, but has there been a comparable rise in women entrepreneurs? Trade liberalisation can lower the costs of goods by removing unnecessary tariffs and other barriers to entry in a market. For instance, if widgets are the item under question and a tariff is removed, the overall cost of widgets in the domestic economy is reduced. Gender only comes into play (from the perspective of the domestic economy) if access to cheaper widgets is determined by gender. However, there are gendered trade effects in the exporting economy, which is not discussed within the parameters of this report. As noted by the Organization of American States (OAS), 'While economic models do not consider whether the winners or losers are male or female, data and anecdotal evidence suggest that there may be some characteristics inherent to or related to each gender that will cause these groups to react differently to policy changes (Coche et al. 2006). Aside from inherent characteristics, socialisation and how women are valued or not valued within a society can have an impact. Also, although deficient in some places, gender concerns may be superseded by others, as in Kenya where the focus is on preventing tribal marginalisation and not specifically on increasing access for women. In Jamaica, the opposite is true, with a greater emphasis placed on the role of women and how they contribute to trade processes. For the most part, gender considerations concerning trade are still in their development stages with much of the focus being directed at capacity-building activities.

Although the term used is 'gender equality' in practice it often refers to affording women equal access to opportunities by seeking to improve their capabilities, since most societies are skewed towards a patriarchal system (Coche et al. 2006). With a focus on human capital development, trade adjustments seek to rectify such imbalances. They can be gendered in their approach. For example, if the pastoral farming sector in a country employs more females than males then programmes directed toward developing human capital must take into account that their target group will consist of more women than men. The human capital development focus is not just in the goods sector but also in services. In 2003, the United Nations Conference on Trade and Development (UNCTAD) and the Inter-American Development Bank (IDB) launched programmes of their own within the Americas that were also focused on reaching out to women entrepreneurs, university graduates and technology-based entrepreneurs.¹³

3.2 Trade and public procurement

Public expenditure on goods and services ranges from 25 to 50 per cent of GDP in developing countries (Girvan 2010). Excluding procurement in the defence sector, the estimated value of global public procurement is US\$1.5 trillion (UNDP 2003: 297). Despite the large share of government procurement in many national economies and its influence on global finance and trade, public procurement remains one of the most protected areas of trade in the multilateral trading regime. According to the European Commission, public procurement 'is not covered by any multilateral WTO discipline and it is, for example, specifically exempted from the WTO obligation to treat foreign and domestic companies in the same way.'¹⁴

¹³ See www.empretec.net

¹⁴ European Commission, <http://ec.europa.eu/trade/creating-opportunities/trade-topics/public-procurement/> (accessed 18 January 2012).

The WTO plurilateral Government Procurement Agreement (GPA) is constructed around the principles of fairness, openness, transparency and non-discrimination. Although the GPA provides market access, it is a voluntary agreement which members sign separately from their mandatory obligations to the WTO. There are currently 41 WTO members covered by this agreement.¹⁵ Of the 41 signatories, only, Canada, Malta, Singapore and the United Kingdom belong to the Commonwealth. Moreover, none of the signatories to the GPA are developing nations, although observer countries include Cameroon, India, Malaysia and Sri Lanka. The majority of the member countries of the Commonwealth are developing nations, thus the developing world's view of public procurement is relevant to the Commonwealth.

3.2.1 At the multilateral level

The WTO GPA is separate in its application and does not automatically apply to all government procurement of goods and services between partner countries. Rather, coverage is determined by each country's scheduled commitments on purchases by central and sub-central government entities and public utilities. The GPA typically applies to goods, specified services and construction services. In order to receive coverage under the GPA, government procurement contracts must meet minimum value thresholds, which vary according to the procuring entity and contract.

Industrialised nations, and Europe in particular, have been eager to press the developing world into signing the GPA but the point of disagreement is the issue of

market access into developing countries. Developing countries claim that if they grant greater access to industrialised countries to their public procurement market they will require funding for technical assistance and capacity building both for the public sector organs responsible for managing procurement processes and for key sectors of the economy. This would be required to improve sector competitiveness in readiness for increased competition, often from multinational corporations. This debate is well encapsulated within the Aid for Trade (AfT) debate.¹⁶ Developing countries would face high 'opportunity costs'¹⁷ in reforming and harmonising their public procurement systems. Therefore, negotiations on public procurement in the WTO are currently limited to improving transparency in public procurement. Indeed public procurement in the developing world 'represents a huge untapped potential area for business for Western corporations' (Girvan 2010). Also, gaps in technical expertise mean that the advantage tends to rest with the developed world. This has traditionally made developing nations sceptical of implementing PPP within trade negotiation frameworks. A lack of knowledge regarding proper process is often exposed in these arrangements and developing countries typically lack the administrative capacity to implement the necessary reform.

Some developing countries are opposed to liberalised public procurement – which would mean providing equal national treatment for all members of the WTO – because they wish to protect their small and medium-sized enterprises (UNDP 2003:

15 World Trade Organization website. General overview of WTO work on government procurement, www.wto.org/english/tratop_e/gproc_e/overview_e.htm (accessed 18 January 2012).

16 'Aid for trade' is a strategy of promoting economic development by assisting developing countries and particularly least developed countries to create or improve the infrastructure needed to facilitate global trade. See www.wto.org/english/tratop_e/devel_e/a4t_e/aid4trade_e.htm (accessed 21 May 2013).

17 'Opportunity cost' is the cost of an alternative activity, service or good that must be foregone in order to undertake a certain action or achieve something else. It allows policy-makers and others to focus on the scarce resources available to achieve desired outcomes.

300). They may have priorities that take precedence over economic considerations when debating the liberalisation of public procurement to foreign competition. Their overriding concerns may often be providing jobs for locals, bolstering social development, stimulating the national economy and supporting minority groups and small businesses that face greater challenges in business than large enterprises or foreign firms. It is often more difficult for these smaller countries to diversify their economies and they may rely on only one economic sector (such as oil in Trinidad and Tobago, or tourism in the smaller Caribbean islands). Therefore, the advantage for developing countries to remain non-signatories to the GPA is that they are not bound by the plurilateral GPA, allowing them to exploit their purchasing power to deliver domestic policy goals, such as local industry sector development or support of social demographic groups.

3.2.2 At the regional level

Because of the challenges for countries in reaching trade agreements, there has been a trend towards the use of regional blocs to negotiate market access across a broad range of sectors. Commonwealth countries which are non-GPA signatories continue to grapple with the requirements of inserting liberal procurement policy commitments into regional trade integration agreements. In such a context, the extent to which these non-GPA signatory countries use procurement policy to direct domestic policy concerns is questionable. Regional or bilateral trade integration agreements typically include in their commitments the inclusion of 'national treatment and non-discrimination' principles. Thus preferences for local industry sectors or enterprises run by specific social groups would not apply, unless these exceptions were agreed to and scheduled in regional or bilateral commitments.

3.2.3 At the domestic level

It is undeniable that widening small businesses' access to public procurement contracts should also expand access of women-owned businesses to the tendering

process, particularly as women-owned businesses are highly represented within the SME sector. There is limited evidence to suggest that the attainment of 'value for money' (or indeed any of the other good governance principles) in the selection of a best contractor or supplier of public goods and services requires the restriction of public contracts to larger companies. In an efficient government procurement system potential suppliers should have equal opportunity in competing for public contracts. Generally, public procurement processes are assumed to be fair, offering opportunities for all companies that meet the published tendering requirements. However, careful study of typical tendering requirements reveals that SMEs and women-owned enterprises may be disadvantaged by their size and composition.

Overall, the degree of a country's openness to foreign competition for public tenders, domestic competition and even the transparency and accountability of the procurement process have serious implications for social development and the welfare of women and minority groups. This is often because of the gendered differential impact of international trade which is not well understood or researched. Researchers generally accept that international trade creates 'winners and losers' which may be sector or industry specific and may be analysed by gender; because some sectors disproportionately employ women or men, for example the garment industry of Bangladesh or Vietnam and the mining industry of Australia, Namibia or South Africa. Changes in the pattern of international trade are transmitted through an economy at different times (time-lag) according to the characteristics of the individual sectors until such time as the economy reaches equilibrium, that is, where there are insignificant increases/decreases in unemployment or movement in consumer prices. Thus, within the Commonwealth the issue of the liberalisation and transparency of trade for public procurement is a sensitive issue that continues to require careful consideration and negotiation within the WTO and beyond, so as to align trade openness with human development goals.

Chapter 4

Good Governance and Public Procurement in the Commonwealth

Governance, both good and bad, has become a fashionable term within development literature and its concerns are relevant to the study of public procurement. This is illustrated by the United Nations Economic and Social Commission for Asia and the Pacific, which defines governance as 'the process of decision-making and the process by which decisions are implemented' (UNESCAP 2002). 'Good governance' has defining characteristics – namely, it has high levels of participation, it is consensus-oriented, there is accountability and transparency within the decision-making system, the system is responsive, effective, efficient, equitable, inclusive and follows the rule of law (UNESCAP 2002).

Because of the rigour of these characteristics, good governance has often been regarded as difficult to achieve. However, a report from the Commonwealth Secretariat notes that 'Good governance is not a luxury but a basic requirement for development' (Commonwealth Secretariat 2000: 5). The high standards necessary for good governance have made its realisation elusive around the world, not just within the Commonwealth. Yet, the effective, efficient and equitable delivery of public goods and services, as well as the institutional capacity to manage the overall process of PPP are of increasing relevance for developing countries and the Commonwealth as a whole since a large portion of its membership consists of developing nations.

The focus of good governance on goals of accountability and transparency highlights the importance of efficiency and efficacy of public expenditure, as citizens increasingly

want to know that scarce public resources are allocated appropriately and result in desired outcomes. In September 2011, a conference was held in Mauritius entitled 'Transformation of the Commonwealth Public Procurement Network: The Need for Partnership in Public Procurement' with the expressed purpose of enabling 'the Commonwealth Secretariat to identify country-specific needs for the strengthening of key institutions of public administration and their capacities to promote best practices and to reduce corruption'. The Commonwealth Public Procurement Network (CPPN) is thus pursuing one of its aims to strengthen the regulatory oversight and policy-making public procurement bodies within Commonwealth countries, to peer learn and through different forums encourage the adoption of efficient and effective practices which can be modified to fit the context of member countries.

Box 4.1 Beyond compliance – better procurement outcomes

The Governance and Institutional Development Division of the Commonwealth Secretariat sponsored an Africa regional conference of public procurement professionals 'Looking beyond Compliance: Promoting Better Procurement Outcomes for Commonwealth Public Procurement Network (CPPN) member countries,' in Dar es Salaam, Tanzania in October 2012. The conference was an opportunity for procurement specialists to freely exchange ideas, and their knowledge and experience and for the Gender Section of the Secretariat to obtain information on the interface of gender and public procurement from officials with oversight and regulatory functions.

This section summarises some of the findings of the Secretariat's engagement at the conference with procurement specialists from Cameroon, Malawi, Mozambique, Namibia, Nigeria, Seychelles, Sierra Leone, Uganda and Zambia.

- 50 per cent of countries have public procurement laws and regulations which do not allow for positive discrimination on the basis of pursuing diversity.
- For those countries that explicitly reference specific groups of suppliers for special treatment, procurement officials indicated they have many opportunities during assessment of the criteria and/or evaluation stage of the procurement process to address supplier diversity.
- 20 per cent of countries have public procurement laws which mandate the reservation of contracts for supported types of businesses or sectors.
- 90 per cent of the countries stated that splitting the tender requirements into smaller 'lots' to encourage more small companies to bid would be appropriate to widen access to government contracts.
- Only one country reported that contracts are *disaggregated* according to gender; this was specific to contracts in the education sector.
- The average value of contracts issued in US dollars in any financial year were estimated between US\$2 million and 50 million, or US\$6 billion in the case of Nigeria (Africa's most populous country).
- The average size of the most successful tendering companies as measured by estimated number of employees was between 51 and 250 employees.
- All the country respondents stated that supplier diversity is a useful tool to explore in the context of public procurement. Country respondents further outlined possible improvements to the public procurement regime to widen access to under-represented categories of contractors, including women-owned/managed businesses. Such improvements included:
 - ◆ Introduce in the law 'set-asides' for certain categories of suppliers;
 - ◆ Improve on 'preference margin';
 - ◆ Improve the capacity of disadvantaged groups to meaningfully participate;
 - ◆ Issue public notices to tender, fully explaining procedures and giving equal opportunity for companies to bid;
 - ◆ Introduce courses on procurement; provide sensitisation on Public Procurement Act;
 - ◆ Include women-owned businesses as an additional evaluation criteria;
 - ◆ Introduce standardised bidding documentation;
 - ◆ Sensitise policy-makers on the benefits of supplier diversity;
 - ◆ Partner the public and private sectors in embracing the concept of supplier diversity.
 - ◆ Minimise the requirement of 'past experience' in supplying contracts wherever possible to provide more opportunities for new entrants;
 - ◆ Design new legislation to allow for restrictive bidding to include supplier diversity under a specific threshold; and
 - ◆ Hold workshops to explore 'supplier diversity' and introduce this new concept to potentially unaware developing countries. This will provide a platform for discussions to start.



The concerns associated with public procurement are also part of the umbrella of issues that make up the good governance paradigm. As most of the Commonwealth is made up of relatively young nations, they share a variety of governance challenges. Regardless of the global location, whether in the Caribbean, in Africa or in South-east Asia, corruption is an ongoing concern. The reduction, if not eradication of poverty has been identified as a way of combating corruption. Since corruption involves two-way transactions (Commonwealth Secretariat 2000: 5), initiatives aimed at addressing access of the poor and traditionally marginalised to economic resources via fair means, would help to combat disadvantaged groups seeking such access via unfair or illegal means. This is not to suggest that poor and traditionally marginalised populations are more susceptible to engaging in corrupt practices, but rather to recognise that these groups tend to have limited choices when they seek to access public (and private) services. This can mean that the pressures to comply with requests for extraordinary payments, in order to access those services, are severe.

Private-public sector transactions are more prone to corruptive practices than any other type of transaction (Commonwealth Secretariat 2000). Increasing the

transparency of public procurement activities is therefore viewed as an effective way of attacking corruption. Dishonest behaviour can be manifested across the entire procurement continuum so that effective monitoring and evaluating tools are needed to ensure that transparency and accountability standards are met. Such a system makes corruption all the more difficult since actions must be reported at each step. Having such information as part of the public record has been regarded as an effective measure against corruptive practices. However, public acknowledgement of procurement contracts or monitoring and evaluation tools alone is not sufficient to ensure transparency. Several other factors are critical, including an environment that supports transparency, careful attention to which organ monitors the system and the powers required to take action against corrupt practices, both corporate and individual.

The sample of nations chosen for this desk review reflects the four main geographic regions of the Commonwealth: Kenya in Africa, India in Asia, Australia in the Western Pacific and Jamaica in the Caribbean. Also, the sample provides a range of countries with differing economic status, ethnic constitution and population size, as well as other factors.

Chapter 5

Country profiles

5.1 Country profile: Kenya

Box 5.1 Country overview: Kenya

Population: 41,070,934 (20,602,231 males and 20,468,703 females)

Sex ratio: 994 females per 1,000 males (CIA 2011)

Gross domestic product: US\$66.03 billion

Gross domestic product per capita: US\$878.00

Gross domestic product based on purchasing-power-parity (PPP) per capita GDP: US\$1711.00 (CIA 2011)

Major sectors: agriculture (22% of GDP), industry (16% of GDP), services and transportation (62% of GDP)

Major exports: tea, horticultural products, coffee, petroleum products, fish, cement

Status of women: Kenyan society is traditionally patriarchal so that discriminatory practices have a cultural base, which makes them more difficult to combat. Although there are approximately as many women as men in Kenyan society, men have far greater access to economic resources and decision-making. An extensive network of NGOs has been created and government initiatives have been mobilised to address these concerns.

Trade policy: After progressively liberalising its trade regime since the mid-1980s, Kenya's most favoured nation (MFN) Tariff Trade Restrictiveness Index (TTRI) is currently 8.2 per cent, indicating a more open economy than that of an average sub-Saharan Africa (SSA) or low-income country (11.3% and 11.6%, respectively). Based on the TTRI, it ranks 84th out of 125 countries (where the 1st is least restrictive). With the government's objective of attaining food security, the agricultural sector is given a higher degree of tariff protection (19.9%) than the non-agricultural sector (6.8%) (World Bank 2010).

5.1.1 Overview

The Republic of Kenya is located on the eastern coast of Africa on the equatorial line. It covers an area of just over 580,000 square kilometres (CIA 2011). A former British colony, Kenya was one of the first African countries to achieve independence. The political landscape was dominated by Jomo Kenyatta, who led the Kenyan African National Union (KANU) to take control of the nation's first independent government in 1963.¹⁸ By 1969, Kenya effectively became a

one-party state with the KANU consolidating full political power. This lasted for close to three decades until 1992 when political power was decentralised and a space was allowed for the creation of opposition parties.

A July 2011 estimate puts the country's population at approximately 41 million¹⁹. This diverse country, with some seven indigenous main ethnic groups, has been a Commonwealth member since 1963. It also contains substantial numbers of immigrants, both African and non-African. Until recently

18 INDEV, www.indev.org/profile_-_kenya.htm (accessed 21 May 2013).

19 See www.indexmundi.com/g/g.aspx?v=21&c=ke&l=en (accessed 21 May 2013).

Kenya was governed by a president. Due to contentious elections in 2011, power is now temporarily shared between a president and a prime minister, a situation that is to be resolved at the next election. The average age in Kenya is 19 and the ratio of males to females is more or less 1:1 based on current estimates. Life expectancy is low, somewhat surprising, given Kenya's position as a regional leader in trade and finance. Economically, Kenya has the necessary building blocks to be able to exert more influence both regionally and internationally. These strengths have not been maximised due to the presence of 'corruption and by reliance upon several primary goods whose prices have remained low' (Index Mundi (2013)).

Corruption has indeed been an important factor as it has led to the suspension of International Monetary Fund (IMF) and World Bank funding on more than one occasion. Post-electoral violence in 2008 also contributed to a slowdown in economic growth, but the country has since recovered with 2010 estimates showing a growth rate of 5 per cent, as compared to a 2008 estimate of 1.6 per cent (CIA 2011). The electoral situation had such a marked effect on the economy because of the Kenyan reliance on tourism for much of its GDP. Services account for over 60 per cent of overall GDP (CIA 2011; PwC 2013). This does not mean that procurement is of lesser importance because of the heavy bias toward a service-oriented industry. On the contrary, procurement plays an important part in the everyday workings of hotels, safaris, and other activities geared to tourism in which the government has a controlling or major investment.

5.1.2 Gender in Kenya

Women have traditionally faced discrimination in Kenya because, like most countries, society is structured along patriarchal lines. A reliance on customary as opposed to civil law also means that when legislation is adopted it is most likely to be ineffective. However, Kenyan women have consistently shown their worth. One example is the role that women played during Kenya's struggle for independence

against the British. As members of the Mau Mau²⁰ they 'acted as reconnaissance and intelligence officers, and cooked, carried food and arms' (ADB/ADF 2007). Since gaining independence, there has been virtually no expansion of the rights afforded to women, and Kenyan society has remained largely patriarchal. Currently, the national mechanism responsible for gender issues is the Division of Gender within the Ministry of Gender, Sports, Culture and Social Services. A framework policy, 'The National Policy on Gender and Development' is in place since 2000 and is further enhanced by a National Commission for Gender and Development, established by the government in 2004 (ADB/ADF 2007). The national policy came into effect in 2008. The Division of Gender, however, reflects recent indecision on the part of the administration; it was downgraded from the Department of Gender in February of 2007, having only achieved that particular designation three years earlier.

Compared to men, the economic role of women in Kenya has grown. This is evidenced by the fact that poverty levels for male and female-headed households in rural areas are almost at equal levels. From a decision-making standpoint, gross inequity is apparent. Although women make up more than half of Kenya's population, as of the 2007 election, only 21 parliamentarians (10%) are female (ADB/ADF 2007). This suggests that women are not being afforded the same opportunities as their male counterparts in the political sphere. This is further compounded by the fact that most of the Kenyan population lacks knowledge of laws and the legal system. In lieu of civil law, customary law is reverted to. This puts women at a disadvantage since Kenyan society is traditionally male dominated. NGOs have been employed as a means of addressing these shortcomings. As active as Kenyan civil society is regarding gender considerations, 'many of the NGOs which deal with gender concerns address practical

20 The Mau Mau were the revolutionary indigenous forces of Kenya, who took up armed struggle to fight for independence from the British colonialists between 1952 and 1960.

gender interests only, such as gender-based violence. Those NGOs which have the potential to address strategic national interests, such as female representation in political parties, women on business boards, public administration, defence and peace keeping etc., often lack capacity and/or funding' (ADB/ADF 2007). The battle for women's rights on the civil society level has also been compromised by government favouritism toward the national women's organisation Maendeleo ya Wanawake (MYWO). While Kenya existed as a one-party state under the KANU, government incorporation of MYWO simultaneously led to the exclusion of more progressive and militant women's organisations. Once Kenya returned to a multi-party political system in 1992 this association was closed down. However, perceptions of favouritism remain. The move to a multi-party system has been beneficial for the women's movement in other areas as there has been an increase in the number of organisations, with the number of NGOs going from several hundred in 1990 to around 3,000 in 2003 (ADB/ADF 2007).

Economically, there is great inequality between the sexes. Kenya relies heavily on agriculture and access to and ownership of land is a reliable indicator of wealth and levels of economic participation. Under Kenya's 'Land Rights', ownership of land falls into three general categories, namely individual (freehold), public or communal (customary) and religious-based. This categorisation, combined with the existing lack of legal knowledge within Kenyan society, means that many land transactions are settled under customary law which does not provide for the rights of women. For instance, the ADB/ADF notes that 'Registered freehold land ownership in rural areas in Kenya between men and women has been estimated between 95–99% for men and 1–5% for women' (2007). This illustrates a gross imbalance, with female freehold land ownership virtually non-existent. In the case of communally owned land, the right of use of the land is passed on generationally, but handed down exclusively through the male line. Even in

the case of a married couple, if the husband dies the widow inherits right of occupancy, however this ceases once she remarries. If there are any complications, regardless of the reason, the land is automatically passed on to any male children of the union. Since most of the Kenyan economy relies on agriculture, the connection between land ownership and the ability to take advantage of public procurement activities within the agricultural sector is clear. Women make up the majority of employees in this sector, but they do not have the same level of access to the factors of production as men and are effectively locked out of the decision-making process. There are few female-owned businesses in Kenya, although they can be found in food processing, clothing manufacture, agro-processing, horticulture, retail, entertainment and other sectors, all of which can be sources of supplier diversification to public and private sectors. The ADB/ADF report notes that in 1999 women constituted 47.7 per cent of SME owners (ADB 2007). These figures are deceiving; 86 per cent of these female-owned SMEs are single operators and only 4 per cent actually hire workers. The problem with so many women operating disproportionately as sole traders is that they have low capacity for further expansion or income generation, because of the capital, technology or human resource investment required for scaling up their operations. Sole traders may also lack the capacity and expertise necessary to tender for procurement contracts. Access to infrastructure is also gender-biased. Women lack concrete opportunities because of inherent deficiencies in the maintenance and management of the public procurement system.

5.1.3 Trade policy in Kenya

The 'National Trade Policy Vision', as stated by the Kenyan Ministry of Trade in 2009 states that the goal is for 'Kenya to become an efficient domestic market and export led globally competitive economy' (Ministry of Trade 2009). The Ministry further identifies that in order to achieve these goals Kenya must both promote and expand its export

of goods and services while developing an efficient and competitive domestic market. Effective reform of public procurement will facilitate these goals, and thus have a positive impact on trade policy. The focus on exports means that Kenya considers international trade to be important. However, its status as a developing nation mean that it faces a variety of constraints that include a limited capacity for diversification (due to the huge investments required to re-orient an economy towards non-traditional production and the considerable time lag before the benefits of such investment are realised); low value addition in production; increased use of non-tariff barriers in export markets; an inefficient domestic trade infrastructure; limited access to finance for trade initiatives; the erosion of its preferential status; and deficiencies in institutional capacity (Ministry of Trade 2009).

Taking these limitations into consideration, the goal of becoming an 'export led globally competitive economy' is ambitious at best, although the identified constraints may be mitigated by the adoption of liberalising trade policies. However, trade liberalisation is a contentious policy that is often applied, yet its beneficial effects are rarely direct:

'...the relationship between trade liberalisation and growth is not straightforward. While openness can stimulate growth it is also associated with risks. For countries with highly specialised economies, openness can be negative, as they are exposed to price risks. So, openness may threaten rather than promote growth' (Bird and Nguyen 2007).

In the case of Kenya, the reliance on agriculture indicates that openness may provide more threats than advantages and thus lead to a contraction of the sector. In terms of the population as a whole, liberalisation tends to cause specific changes to 'relative prices and incentives' (Bird and Nguyen 2007). It is argued that while liberalising practices cause a degree of differentiation in the distribution of assets and income and marginalisation of the poor has been a side effect of such shifts, 'the losers do not come disproportionately from

the poor' (Bird and Nguyen 2007). Although this may be true, from a simple numerical standpoint, in countries where there is a high level of poverty the number of individuals affected will also be high.

As trade reforms move the Kenyan economy towards more open practices, there is increasing awareness of procurement methods and the extent to which those methods are efficiently able to achieve their objectives. Over the last two decades the procurement system in Kenya has gradually developed with a focus towards reducing corruption and increasing productivity. The following section explores public procurement in Kenya from a legislative point of view.

5.1.4 Transparency and accountability within public procurement in Kenya

Kenyan procurement regulation is outlined in The Public Procurement and Disposal Act No.3 of 2005. The Act seeks to establish procedures for procurement and the disposal of unserviceable, obsolete or surplus stores and equipment by public entities. Services are included here though not explicitly stated. The objectives of the Act include, the maximisation of economy and efficiency, the promotion of competition and fair treatment of competitors, ensuring that procedures meet transparency and accountability standards, increasing public confidence in the procedures and facilitating the promotion of local industry with a focus on economic development.

The Act also allows for the creation of the Public Procurement Oversight Authority (PPOA) which is entrusted with monitoring the public procurement system, advising entities, training professionals, disseminating procurement-related information and initiating policy and amendments to the Act that are of relevance to its objectives. The head of the PPOA is the director-general who acts as its chief executive officer and has comprehensive authority. The individual in this position executes management decisions relating to the PPOA and also has a role in dispute settlement. The PPOA is



further enhanced by two supplementary boards, the Public Procurement Oversight Advisory Board and a Review Board. The Advisory Board is made up of the director-general and nine other members appointed by parliament. This Advisory Board (as noted in Sections 22 and 23 of the Act) has the power 'to advise the authority generally on the exercise of its powers and the performance of its functions; to approve the estimates of the revenue and expenditures of the Authority; to recommend the appointment or termination of the Director-General in accordance with this Act; and to perform such functions and duties as a provided for under this Act'. The Review Board is used to provide checks and balances and can overturn the decision of the director-general. There are barriers to this function, but they may be necessary to prevent frivolous cases being brought before the Board. Each application for review has an attached fee and is not guaranteed to be heard as applications may be dismissed on grounds of vexation, vindictiveness and/or unsubstantiated claims. The Review Board must meet certain criteria as well, such as providing a decision within 30 days of receiving a request. These separate entities reflect the accepted norms for good governance practices. Each separate entity can function as a check on the activities of the other. There are also provisions in the law that address contentious areas such as corrupt practice, fraudulent practice,

collusion, conflict of interest, confidentiality, the maintenance of procurement records, the publication of procurement contracts, amendments to contracts and inspections and audits relating to contracts. Greater transparency is crucial since like many other developing countries, Kenya is party to a variety of multilateral aid arrangements that call for good governance standards and, more importantly, that this aid is substantially employed as part of public procurement funding (Migai Akech 2005).

5.1.5 Trade and gender within public procurement

The Act contains special provisions regarding how public procurement activities are to be conducted. Section 39, subsection 4 stipulates that 'the preferences and reservations shall apply to, candidates such as disadvantaged groups, micro, small and medium enterprises; works, services and goods or any combination thereof; identified regions; and such other categories as may be prescribed' (Migai Akech 2005). Importantly, there is no explicit mention of women as a specific group. The wording of this section seems more tailored to addressing concerns of exclusion based on tribal and territorial criteria as opposed to gender exclusion. As a result gender issues can be added to the conglomerate of 'such other categories'. With a male to female ratio of 1:1, (i.e. half the population) gender must be specifically noted for preferences, otherwise challenges specific to women entrepreneurs often fail to receive due attention. As explicit evidence is lacking, it is still assumed that women face exclusion from the procurement process. This is tied to trade considerations since it is also assumed that most women would be engaged in activities relating to micro, small and medium-sized enterprises (MSMEs)²¹ which face technical barriers to entry into

21 There is no strict universal definition of MSMEs in developing and developed countries. A medium-sized enterprise in a developed country may be considered a large-sized enterprise in a developing country. Definitions include measuring numbers of employees, revenue size, etc.

the public procurement process in Kenya. The stringent rules and regulations that have become a part of the battle against corruption complicate the procedure for securing government contracts. For example, simply qualifying to bid for a contract requires an individual or company to meet the following criteria: 'the person has necessary qualifications capability, experience, resources, equipment and facilities to provide what is being procured; the person has the legal capacity to enter into a contract for procurement; and the person is not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing' (Migai Akech 2005). These are necessary components to guard against abuse of government resources, but they simultaneously act as discriminatory barriers to micro and small enterprises that have limited resources. Yet, micro and small enterprises are guaranteed preferential treatment under the Act and as such, they should still be afforded access to procurement processes.

How efficiently these measures are being implemented is of prime importance. There are no clear indicators regarding how effective any measures have been other than those provided by the PPOA itself. They have identified certain operational goals such as the creation of a capacity development strategy and a trainer's manual. Training activities have also resulted in the professional development of 60 members from the Oversight Authority, Advisory Board and Review Board. In addition, about 7,000 stakeholders have been sensitised to the new procurement processes and the goal of the new governing culture (Juma 2010). Despite these reforms and capacity building efforts, not much has changed on the ground. Kenyan society remains heavily patriarchal on a cultural level, making social drivers behind such reforms difficult to embed.

5.1.6 Kenya summary

Capacity to enforce existing legislation is limited and it is suspected that there are extreme deficiencies in rural areas. As a result there may be an urban imbalance in the availability of public procurement opportunities especially with respect to infrastructural development. To some extent, this is to be expected, given that rural areas tend to focus on agricultural activities. Addressing capacity concerns can also provide a platform for further efforts against the negative aspects of trade. As much as the legislation already exists and technical level staff are being sensitised, wider reach into the rural areas is needed. The most current push has been complicated by political tension which has led to a certain amount of instability. However, recent developments suggest that Kenya is now at the end of this disruptive period.

The patriarchal nature of Kenyan society means that strategic gender issues are still a relatively low priority. Awareness of women's rights has tended to focus on more direct issues such as gender-based violence, the impact of HIV/AIDS and female circumcision. These foundational concerns tend to generate much more passion and are thus easier to focus on. However, work can be done in both arenas simultaneously and both processes can inform each other. Increasing the role of women by facilitating access to increased decision-making and economic participation vis-à-vis engagement in public procurement can help to combat the social and cultural stigmas attached to women. This must be balanced with an educational programme targeted at males to socialise and sensitise them to 'enhanced' roles for women.

5.2 Country profile: India

Box 5.2 Country overview: India

Population: 1,210,193,422 (623,724,248 males and 586,469,174 females) (Ministry of Home Affairs 2011)

Sex ratio: 940 females per 1,000 males

Gross domestic product, current prices: US\$1,843.382 (IMF 2011)

Gross domestic product per capita, current prices: US\$1,527.347 (IMF 2011)

Gross domestic product based on purchasing-power-parity (PPP) per capita GDP: US\$3,703.453 (IMF 2011)

Major sectors: agriculture (17% of GDP), industry (28.2% of GDP), services and transportation (54.8% of GDP)

Major exports: engineering goods, petroleum products, chemicals & related products, gems & jewellery, textiles, electronic goods (>80% of export basket)[†].

Status of women: Gender inequality in India is significant. The declining male-female population ratio is the clearest evidence of the discrimination faced by Indian females from conception to death. Women face higher rates of feticide as infants, malnutrition and lack of education as children, and sexual assault and wage discrimination as adults.

Trade policy: Compared with other nations India retains relatively high tariffs. India's Most Favoured Nation (MFN) Tariff Trade Restrictiveness Index (TTRI) for all goods is 12 per cent. Based on the TTRI, India ranks 102 out of 125 countries (where 1st is least restrictive) (World Bank 2010). With the development of its information technology (IT) services sector, India is now pushing for greater liberalisation of trade in services. India is protective of its agricultural industry and retains the right to ban foreign investment in retail. However, in the last five years India has shifted to greater facilitation of imports that fuel the local economy. India has numerous bilateral trade agreements with other Asian countries (World Bank n.d.).

† India.gov, <http://india.gov.in/sector.php> (accessed 15 December 2011).

5.2.1 Historical background

The Republic of India is a sovereign socialist democratic republic with a parliamentary system of government, which was established on 15 August 1947 when it gained independence from British colonial rule and became a member of the Commonwealth. The Constitution of India came into force on 26 January 1950. India is a federal republic of 28 states and 7 union territories. Hindi and English are the official languages but there are 20 other languages that are recognised by the constitution (Commonwealth Yearbook 2012).

Post-independence women have played a prominent role in Indian politics. Sonia Ghandi is the current head of the Indian National Congress, Indira Ghandi served as Prime Minister from 1966 to 1977 and from 1980 to

1984 and Pratibha Patil was the first woman to serve as President of India from 2007 to 2012.

Today India is the world's second most populous nation and the world's 12th largest economy. Religion, caste and language are major factors in the structure of Indian society. With India's status as a BRIC²², it wields considerable political and economic power in global politics. India has not been severely affected by the global financial crisis that began in 2008 and it continues to have a projected average economic growth rate of 7 per cent or higher. India has capitalised on its large numbers of tertiary-educated people

22 The BRIC countries are Brazil, Russia, India and China defined as fast growing emerging economies on a similar stage of newly advanced economic development.

to support its technology service sector. However, the majority of Indians still work in agriculture, and over 700 million people live in poverty according to international standards. However, today there is a considerable and growing middle class.

5.2.2 Gender in India

Despite being an emerging power on the world stage, India still faces a number of contradictions, particularly those of poverty and gender inequality. According to USAID,

Non-discrimination and equality may be formally recognized in the Indian constitution and laws but caste and gender-based discrimination circumscribes every aspect of the lives of the vast majority of Indian women and girls. So deeply entrenched are these realities that it is impossible to work towards any kind of social transformation... It is reflected in private practice and public policies, resource allocations, and public provisioning of social services (USAID 2010).

The most obvious indicator of gender disparity in India is 'the trend of continuously declining female ratio in the population in the last few decades' (Ministry of Women and Child Development 2001). In every stage of an Indian woman's life she risks gender discrimination. After conception, foeticide of females is more prevalent than of males and female infants have a higher infant mortality rate (in part due to discrimination in breast feeding). As children, Indian girls face a higher school dropout rate and are subjected to child labour, abuse and malnutrition. In adolescence, some Indian girls become child brides or are forced into commercial sex work and trafficking. Finally, in adulthood Indian women face higher risk of rape, HIV/AIDS infection, unpaid labour, domestic violence and a lower socio-economic status than their male counterparts (Ministry of Women and Child Development 2007).

In India, '90 per cent of women are employed in the informal sector where 70 per cent of the women are involved in the agriculture sector' (USAID 2010). A 2001 census in India found that agriculture employed '75.38

per cent of all female workers including cultivators and agricultural labourers' (Sengupta 2011). Many of the women employed in agriculture are involved in tea cultivation (47.08%), the production of oil seeds (45.43%) and cotton (46.84%), and growing vegetables (39.13%) (USAID 2010).

Better educated women in urban India have been able to gain employment in the areas of tourism, banking, travel and IT (Sengupta 2011). An article from the Trade and Gender briefs on Services in India states that 'Women, with unequal access to physical and human resources make unequal gains and losses from the liberalization of the service sector in terms of employment and access' (Sengupta 2011). But with the inclusion of 'services trade under bilateral or plurilateral Free Trade Agreements, India has granted greater access to its trade partners' (Sengupta 2011). This now means that there may be a greater role and room for women in India's services sector as employees, consumers and entrepreneurs, as there is an assumption that this trade sector will start to expand due to investment from foreign companies wishing to establish operations in India to take advantage of its large consumer market.

In the services sector, women make up 59.7 per cent of those who are employed in the waste disposal sector, as well as 18.26 per cent working in financial services and 17.84 per cent in computer-related services. This makes a total of 3.02 per cent of women's services employment, and 1.31 per cent of women employed in urban services (Sengupta 2011). Retail accounts for 25.82 per cent of women employed in rural areas and 16.93 per cent employed in urban areas (Sengupta 2011).

Ownership by women of financial and physical assets in India has historically been limited. According to the Trade and Gender Brief, a low percentage of women actually own enterprises. Women usually work unpaid in family-owned enterprises and usually have no rights of ownership to these businesses.

In India's five-year plans since 1974 (currently on the eleventh, 2007–2012), the state

has been implementing programmes and legislation aimed at women's advancement. In 2001 the Indian government established the National Policy for the Empowerment of Women, with the goal 'to bring about the advancement, development and empowerment of women' (Ministry of Women and Child Development 2001). The policy refers to supporting positive economic and social policies for women, providing equal access to employment and mainstreaming gender perspectives in development. The Indian constitution empowers the state to adopt measures of positive discrimination in favour of women. The 73rd and 74th amendments to the Indian Constitution reserve 50 per cent of seats in all tiers of local government for women. One such amendment has encountered documented success. A study done by Northwestern University, USA measuring the impact of this affirmative action legislation (reserved leadership positions for women in randomly selected village councils in India) revealed that in the villages which had female leadership, the gap in gender aspirations for their children's career closed by 25 per cent for parents and 32 per cent for adolescents (EurekAlert! 2012). Adolescent Indian girls were also more likely to be attending school in these villages than in those without female leadership. Another significant piece of legislation that has benefitted women was the Protection from Domestic Violence Act (2005).

At the international level India has ratified numerous conventions to secure equal rights for women, such as the 1993 Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and it has endorsed the Beijing Declaration as the Platform for Action in 1995.

5.2.3 Overview of public procurement in India²³

Up to now, India has not enacted any legislation to govern public procurement, which is regulated under the General Financial Rules (1963) and the Delegation of Financial Powers Rules (1978), both created

by the Ministry of Finance (Kachwaha 2009). Different procurement rules apply at various levels of state government (federal, states and territories, public sector units and enterprises). The Ministry of Finance has also prepared a manual on Policies and Procedures for Purchase of Goods by all agencies. The Directorate General of Supplies and Disposals also issues guidelines on public procurement for central ministries to follow. However, individual government agencies develop their own, more detailed rules based on the federally-mandated regulations and most create their own model tender documents. The procurement rules and procedures as outlined by the Ministry of Finance are applicable only to goods and services valued at more than US\$500. There is a Central Vigilance Commission (CVC) that provides supplementary regulations as well as oversight. Additional oversight is provided by the comptroller and the auditor general. However, there is no federal authority that defines procurement policies and that oversees compliance with existing policies.

Procurement methods depend on the value of the contracts to be awarded. Limited tendering from direct requests is permitted in some cases under special circumstances (e.g. emergency situations) but in general, wide dissemination of tenders is encouraged. The bidding process for public procurement from private partnerships is divided into two phases: the Request for Qualification, which shortlists eligible bidders for tenders; and the Request for Proposal, where potential awardees of the contract examine the project and offer a final quote.

Increasingly, government tenders, past and present, are displayed on a central website (Indian Government Tenders Information System)²⁴. Selection criteria must be stipulated in the bidding document and the winner should provide 'value for money'.

Notably, defence procurement is covered by a unique set of policies and procedures laid out by the National Security System and decisions made by the Defence Acquisition

23 ADB/OECD 2006.

24 See www.tenders.gov.in

Council. The latest revision of the Defence Procurement Procedure was made in 2008.

5.2.4 Transparency and accountability within public procurement in India

The potential growth of the Indian economy is now estimated by the World Bank to be 6.5 per cent for the 2012 fiscal year (Rastell 2012). In spite of this forecast growth, India's economic progress is marred by the inefficiencies and impediments of its administrative burdens, particularly transparency issues (OECD 2011).

Transparency and accountability in public procurement (PP) is currently at the forefront of India's political agenda, with the recent stalling of the Anti-Corruption Bill in parliament. In February 2011, the Indian Cabinet Secretary set up a special committee on procurement. The committee recommended increased transparency in the PP process and making procurement information accessible to the public. Out of these recommendations came the bill for the creation of an independent body to investigate allegations of corruption. It was called the Jan Lokpal Bill or Citizen's Ombudsman Bill. The bill was also formulated with the intention of meeting the standards of the United Nations Convention against Corruption (UNCAC). In December 2011, the Lokpal Bill passed in the lower house of parliament but was defeated in the upper house and, as a result was not granted constitutional status as the 116th Amendment (Kumar 2011). The stalling of the bill has been a contentious issue pitting the government and opposition against one another and inciting the anger of the anti-corruption activist Anna Hazare. This furore over transparency is no surprise given the damning data and evidence of corruption in India.

India ranks 95th out of 185 countries on the Transparency International (TI) 2011 Corruption Perception Index. Compared with the other three countries used in this review, only Kenya has a lower ranking than India. Transparency International's Bribery Index ranks India 19th out of 22 countries. Robin Hodess, research director of Transparency International's Corruption Perception Index, characterised India's bureaucratic and petty corruption as 'extreme' (Burke 2011). A KPMG study (2011a) noted that corruption

affects the Indian people and economy on both a micro and a macro level. They range from the everyday petty bribes paid by the average person to the state level scams that siphon off millions of dollars of state funds. Indeed, the issue of corruption is not purely a matter of perception as indicated on the TI index but an evident reality of life in India.

One does not have to search far to uncover the many corruption scandals in public procurement that have plagued the Indian government administration in recent years. The most shocking thus far is the 2011 telecommunications scandal in which mobile phone frequency licences were sold for a fraction of their cost and the excess siphoned off. The estimated amount stolen is US\$40 billion (BBC 2012).

The Indian parliament has introduced key legislation and initiatives to combat corruption in public procurement. Among them is the Prevention of Corruption Act of 1988 under which there have been disappointingly few convictions. On the other hand, the Right to Information Act (2005) has helped uncover many discrepancies in public finances. A Bill on Public Interest Disclosures and Protection of Informers (Whistleblower resolution) has contributed to protecting informants who come forward with corruption allegations. Transparency International India also created an Integrity Pact in the 1990s, a memorandum of understanding (MoU) between government agencies and potential bidders to reduce or eliminate the potential for corrupt practices in the bidding for and delivering of a government tender. The Indian Central Vigilance Commission advised all government agencies in India to adopt the Integrity Pact in the PP process. There are very clear guidelines for dealing with conflict of interest when procuring from private sector enterprises. As prescribed by the courts, the bidder cannot have any conflict of interest regarding the fulfilment of a government tender (Kachwaha 2009).

The following measures and practices exist in India to promote integrity in public procurement:

- Codes of conduct for procurement personnel contain conflict of interest

regulations. Some of the measures include reporting gifts beyond a certain value received by personnel and staff rotation.

- The CVC conducts regular analyses of weaknesses and irregularities and issues instructions to prevent such risks.
- Integrity pacts are now occasionally being included in large contracts.
- There are penal sanctions for corruption in public procurement and companies are removed from the list of registered suppliers.
- Bidders who believe there have been unfair procurement practices can seek judicial review of the decision or can resort to public interest litigation. Complaints can also be submitted to the CVC. However, procurement rules are not as detailed as law, and thus infractions are more difficult to judge.
- The Right to Information Act of 2005 gives citizens access to procurement decisions in a given time frame.
- Internal and external audits are carried out of agencies that procure goods and services. The External audit information is available to the public.
- Records are kept of all procurement decisions, but there is no set period for retention of these records by various agencies.

5.2.5 Gendered public procurement

On reviewing the Manual on Policies and Procedures for Purchase of Goods issued by the Ministry of Finance, the only reference to women as suppliers of goods within government tenders was a preferential provision stipulated for a particular manufacturer of hand woven fabric that is affiliated with a women's development organisation:

2.4 Preferential/Mandatory Purchase from certain sources Product Reservation

i) Khadi Goods/Handloom Textiles: The Central Government has reserved all items of hand-spun and hand-woven textiles (Khadi goods) for exclusive purchase from Khadi & Village Industries Commission

(KVIC). Government has also reserved all items of handloom textiles including Barrack Blankets for exclusive purchase from KVIC or notified handloom units through the Association of Corporations and Apex Societies of Handlooms (ACASH) and Women's Development Organization (WDO) (Ministry of Finance n.d.)

In 2004 the Ministry of Women and Child Development (MWCD) adopted gender budgeting²⁵ as a way to address gender inequality. The Ministry of Finance mandated all ministries to establish gender budgeting. As of 2007, there are 51 ministries with gender budget cells. According to the Gender Budgeting Manual 'gender budgeting translates stated gender commitments into budgetary commitments' (Ministry of Women and Child Development 2007). However, the gender budgeting handbook fails to mention procurement policy. Similarly, the 2007–2012 Five-Year Plan also does not specify plans to target women's empowerment through public procurement, although it has progressive aims to address gender disparities, such as increasing the sex ratio of females to males in the 0–6 age group by 2012 and then again by 2017 and ensuring that at least 33 per cent of the beneficiaries of all government schemes are women and girls.

There are several initiatives to encourage and support female entrepreneurship through the Ministry of Women and Child Development and the Ministry of Micro, Small and Medium Enterprises (MSME). The MSME ministry has a 'Women Cell' to provide assistance to women entrepreneurs²⁶. The Small Industries Development Bank of India offers developmental assistance, micro credit and soft loans to women pursuing

25 Gender budgeting is a universally accepted practice of creating a government statement of planned revenues and expenditures on women and men, girls and boys, resulting in budgetary commitments that show a solid accountable connection to a government's gender equality policies and enables the impact of that budgetary spend to be measured.

26 See <http://smallb.in/%20fund-your-business%20additional-benefits-msmes%20women-entrepreneurship> (accessed 21 May 2013).

income-generating activities. Indeed these schemes do advance the development of Indian women but they do not target the difficulties specific to accessing and successfully bidding for public tenders.

On the other hand, preferential procurement policy regarding micro, small and medium-sized enterprises has a clearly delineated policy under the Government Purchase and Price Preference Policy for Micro & Small Enterprises. There are also extensive references in the Ministry of Finance's Manual on Policies and Procedures for Purchase of Goods to preferential treatment for small and medium-sized enterprises.

The Ministry of Micro, Small & Medium Enterprises states on its website:

In order to provide assistance and support to Micro & Small Enterprises (MSEs) for marketing their products, under the present Government Purchase and Price Preference Policy for Micro & Small Enterprises (MSEs), Government of India has been extending various facilities to the MSEs registered with National Small Industries Corporation (NSIC) under its Single Point Registration Scheme. In addition to the facilities, 358 items are also reserved for exclusive purchase from MSE sector (MSME n.d.).

This policy supporting MSMEs can indirectly benefit women as a larger percentage of female-owned or oriented enterprises are micro, small or medium-sized. One example of a successful female-oriented enterprise is Banascraft²⁷ in Gujarat, which sells the traditional handicrafts of more than 10,000 village women, without the help of intermediaries (UNCTAD 2004). Another example is a company called B2B, a New Age Systems, United States-based software services company with offshore processes in India, which was founded by an Indian woman educated in IT engineering in Kerala, India (UNCTAD 2004). These two enterprises would qualify as beneficiaries of the government's preferential procurement policy for MSMEs although the initiative does not specifically target women.

5.2.6 The nexus of trade, gender and public procurement policy

India's current trade policy is one of increasing liberalisation even though India has some of the highest tariffs in global trade. The Indian government now recognises the importance of permitting key imports to fuel growth of the economy. In spite of its openness to trade, and being ranked 56th on the World Economic Forum's Global Competitiveness Index, India retains protective barriers for its agricultural sector in a bid to protect its small farmers and local agricultural industry.

The Foreign Trade (Regulation and Development) Act, 1992 is the main legislation regulating India's foreign trade. Through this act the government retains the right to prohibit, restrict or regulate all imports and exports. Current trade policy is driven by globalisation of the Indian economy, export-led growth, improving efficiency and increasing the competitiveness of Indian industries. There is also increasing focus on liberalisation, openness and transparency. India seeks export expansion in its IT service sector, agriculture (e.g. the Special Agricultural Produce Scheme), handlooms and handicrafts, gems and jewellery, and leather and footwear.

India has predominantly entered into regional trading arrangements, with the aim of increasing trade liberalisation. It is a member of several free trade areas (FTAs) and preferential trade areas (PTAs). Among them are the Agreement on the South Asia Free Trade Area since 2006, The Asia-Pacific Trade Agreement (formerly the Bangkok Agreement), the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation and the agreement on comprehensive economic co-operation between India and the Association of South East Asian Nations (ASEAN). Beyond Asia, India has the Preferential Trade Agreement between MERCOSUR and the Republic of India, which was signed in 2004²⁸.

27 See www.banascraft.org (accessed 21 May 2013).

28 See http://business.gov.in/trade/trade_agreements.php (accessed 21 May 2013).

India has been unilaterally opening its service sector to trade liberalisation and, not surprisingly, this has had a gender-differentiated impact on women. The service sector in India constitutes 55.2 per cent of India's GDP. India's service exports are in the areas of software, computer and IT services (17.84% of female employment), travel, transportation and business services. These areas are mostly urban-oriented exports.

The services that receive the bulk of foreign direct investment (FDI) due to newly opened trade in India are also in skilled sectors such as IT. Educated women in urban areas can access employment and/or opportunities to supply tenders readily in those sectors that require educated and highly skilled workers. However, educated, urban women are a small subset of the Indian female population whilst the majority of women in India live in rural areas and work in the informal sector, typically in agriculture for low wages. Thus, the opening of India's trade in services does not greatly benefit the economic welfare of the majority of Indian women. Furthermore, FDI often increases mechanisation of labour-intensive industries, thus displacing informal women workers in these industries.

When foreign investments and enterprises establish themselves in India due to the more open trade policies, female entrepreneurs of small enterprises have more difficulty in meeting the standards and efficiencies required for foreign investment. Foreign enterprises may benefit from economies of scale and have more technology and capital, and are therefore in a better position to become the suppliers for public tenders, to the detriment of smaller, sometimes female-owned Indian enterprises. Fortunately, 'the Indian government uses purchase policy to give preferential access to women entrepreneurs, village enterprises and MSMEs and to other disadvantaged groups' (MSME n.d.).

Women's ownership of assets has always been low in India. The leading area of female-owned enterprises is in education at 32.02 per cent. When Indian women work in family enterprises it is most often as unpaid labour, rather than having a share of official

ownership in the enterprise. In informal working situations (such as agriculture), contractual work, low job security, unsecured wages and a lack of health insurance or maternity leave is the cultural norm.

Openness to foreign banking has also not improved women's access to public procurement. The majority of lending by these banks is not in the agricultural sector, in rural areas or to women. Generally, foreign banks do not make loans more accessible to women entrepreneurs.

Liberalisation of agriculture has been increasing in India since 1992 (Chang 1999) when restrictions were removed on the export of rice. India is expected to continue this process of liberalising the sector. However, with the stalled Doha Rounds of negotiations within the WTO, India has made it clear that it will liberalise further when an agreement has been reached with more developed nations to reduce or eliminate their agricultural subsidies (Zeebiz.com 2012). In the event that these liberalising reforms are implemented, the WTO has no specific gender protection provisions in place for this process (Sengupta 2011).

Sengupta also states that:

the Indian Government uses its purchase policy to give preferential access to women entrepreneurs; village enterprises and MSMEs (both of which have large female employment), and to other disadvantaged groups (2011).

Liberalisation of India's public procurement may make continuing its preferential purchase policy quite difficult, as there has been external pressure by developed countries to access India's large public procurement market. It is not clear that preferential treatment for select industries and sectors under public procurement policy is fully compliant with evolving international trade policy law.

5.2.7 India summary

India has taken a proactive approach in addressing systemic and culturally entrenched gender inequality. Among other initiatives, there have been attempts

at gender budgeting, microfinance programmes for Indian women and constitutionally approved affirmative action programmes for promoting women's participation in politics, some of which have been implemented by NGOs.

However, inclusion of a gender component in public procurement is done indirectly rather than explicitly through set policies that apply to all ministries and government agencies. It can be argued that the attempt to address greater participation of women in procurement is made under the umbrella of programmes that support micro, small and medium-sized enterprises. The 'Women Cell' programme of the Ministry of MSME facilitates female entrepreneurship. In spite of this thrust to develop entrepreneurship, greater involvement of women in public procurement must go beyond supporting entrepreneurship. While a female-owned or operated business can be operational and profitable it may not necessarily have access to or understanding of the tendering process. The lack of a standard operating procedure for all government agencies to engage in gendered procurement is an impediment to women's access to and acquisition of government tenders. Thus several issues must be addressed to give women greater access to public procurement:

- Adoption of a standard public procurement procedure that includes an affirmative action component specifically favouring women's enterprises will most directly facilitate women's access to public procurement. Procurement mechanisms should also reward commitments made to gender. The criteria for fulfilling a tender should have a clear gender component that the applicant can respond to.

What should also be noted is that gender is not the only concern regarding inclusiveness in public procurement policy initiatives. The marginalisation and economic hardships faced by the lower castes of the Indian socio-cultural hierarchy cannot be overlooked.

- Measures and clauses specific to providing greater access to the Dalit caste (and other marginalised groups)

should also be included in procurement regulations and legislation.

A major problem concerning public procurement is corruption. Even if legislation and programmes exist to promote gender and class equality in PP, their aims and dictates can be undermined by corruption. Corruption can deform the integrity of the procurement system through the various manifestations of corruption such as bribery, nepotism, cronyism, coercion and blackmail. A KPMG survey on bribery and corruption (KPMG 2011a) determined that a lack of law enforcement fuels India's unbridled corruption problem. Even if the Lokpal Bill is passed in both houses of parliament the survey states that it will be ineffective in practice because of the issue of enforcement. Other contributing factors to corruption in PPP are political interference in procurement activities and delayed justice. Additionally, the complicated bureaucracy and complexity of laws discourage people from seeking legal recourse to their grievances concerning corruption. There is also a prevailing cultural resignation to corrupt practices; the Indian populace considers it to be the status quo (KPMG 2011b).

Measures which should be taken to battle corruption in India and thus bring fairness and transparency to public procurement are:

- Passing of the Lokpal Bill in both houses of parliament;
- Tough punishments and high penalties for corrupt practices, that punish both to the briber and the receiver of the bribe. This may require hiring more manpower for law enforcement bodies;
- Requirements for all state officials to disclose their income and assets to the public;
- A more effective and fluid judicial system. This will also require greater manpower to streamline the judicial process;
- Providing the CVC and oversight bodies with powers beyond recommendation, and providing them with the ability to enforce punishments;

- Greater protection for reporters of incidents of corruption; and
- More civil society movements providing oversight of and initiating dialogue and monitoring of corrupt practices. 'I Paid a Bribe'²⁹ is one such initiative. People can post their experiences of corruption on the site which has a whistleblowing effect and also brings awareness to the issue.

To increase women's access to public tenders, a holistic approach must be used as the disadvantages women face in participating in public procurement go beyond the issue of regulations for public procurement. Women-owned or operated enterprises can benefit from micro-credit programmes to start up and grow their businesses. Micro-finance schemes for

poor women have been relatively successful because they have proven themselves to be reliable credit risks, particularly in group lending schemes. The profits they make are often invested in their families, resulting in an overall improvement in the family's standard of living (Kavitha and Ramachandran 2007). There are numerous micro-credit schemes in place in India. One such example is SHARE Microfin Limited which targets rural women who make less than US\$8 per month and provides access to loans of US\$50 to US\$100 to fund their enterprises (Standford Graduate School of Business 2004). Stable enterprises with sufficient capital are more likely to be successful bidders for government contracts; therefore micro-credit can play an indirect role in gendering public procurement.

5.3 Country profile: Australia

Box 5.3 Country overview: Australia

Population: 21,766,711 (10,908,516 males and 10,858,195 females) (CIA 2011)

Sex ratio: 995 females per 1,000 males

Gross domestic product: US\$882.4 billion

Gross domestic product per capita: US\$69,007.00

Gross domestic product based on purchasing-power-parity (PPP) per capita GDP: US\$41,000.00 (CIA 2011)

Major sectors: agriculture (3.9% of GDP), industry (25.5% of GDP) and services (70.6% of GDP)

Major exports: coal, iron ore, gold, meat, wool, alumina, wheat, machinery and transport equipment (CIA 2011)

Status of women: The percentage of women who are active in Australia's labour force has increased significantly from 43.5 per cent in 1978 to 58.7 per cent in 2009. This increase means that women are becoming more financially secure. Despite this slight improvement, the status of women in Australia's work force still has a way to go. Very few women occupy leadership positions in organisations and there is still occupational segregation between men and women. The percentage of women who work 50+ hours a week has increased from 9 per cent in 1985 to 16 per cent in 2005.

Trade policy: Australia's trade policy consists of a bilateral, regional and multinational approach. Five principles guide Australian trade policy: non-discrimination, transparency, indivisibility of trade policy and economic reform, separation and unilateralism (Australian Government 2011). Based on the TTRI, Australia ranks 14th out of 125 countries (World Bank 2009). Australia therefore has one of the highest levels of trade openness in the world.

29 See www.ipaidabribe.com (accessed 21 May 2013).

5.3.1 Historical background

Australia's first inhabitants are the aborigines who have been described as fire-stick farmers and hunter-gatherers. Though the continent had been observed by the French, Dutch, Spanish, and Portuguese, it was the English, specifically Captain Cook who first explored the island continent and claimed it in the name of England. Australia's first colonists were convicts; a total of 160,000 were banished to the island for petty crimes. Australia's early development was fuelled by this convict population which constructed bridges, roads and buildings. The population steadily increased when gold was discovered in 1851 (Library of Congress 2005).

In 1900 an act was passed to establish the Commonwealth of Australia which became effective in 1901 with its first federal parliament opening in that same year (US Department of State 2012). As part of the British Commonwealth, Australia supported Britain during World War I and World War II. Interestingly, post-1945 saw Australia aligning its foreign policy with that of the USA. The country maintained a stance of collective security and during the period from 1945 to 1965 maintained a restrictive immigration policy called the White Australia Policy designed to keep the country's racial and cultural homogeneity intact (Library of Congress 2005).

5.3.2 Overview of public procurement in Australia

Australia has 'a three-level political structure, a federal government, six state and two territory governments, and local governments, which all have their own procurement legislation, policies and procedures. There is no centralised government execution of procurement activities on the national level while single states do have at least a superior agency for procurement concerns (e.g. Western Australia and its directorate for Government Procurement in the Department of Treasury and Finance). Centralised procurement processes are mainly conducted when a certain amount of money is exceeded.' Each procuring firm/entity is responsible for its own procurement on a national level and

all agencies use/adhere to guidelines set down in the Commonwealth Procurement Guidelines (EC n.d.).

Australia's public procurement spending is around 24 billion Australian dollars per annum (Australian Government 2009). One of the central principles of Australia's procurement centres around 'value for money', that is, ensuring that government receives value for the money spent on activities which in turn leads to quality infrastructure, services and other public goods for its citizens.

Australia's government 'encourages competitive markets, adhering to non-discriminatory purchasing practices, using efficient, effective, ethical and transparent procurement processes.' The government also 'encourages good practices from its suppliers expecting that they comply with Australian laws' (Australian Government 2009). The Government of Australia also makes transparency and accountability a priority and strives to ensure that the public is always aware of how its money is being spent.

The period 2007 to 2008 saw contracts valued at A\$23.7 billion. Of this total, A\$16.5 billion or 69 per cent represented goods and services procured from within Australia itself. The total share of Australian-based contracts awarded (excluding procurement from the Department of Defence) is 89 per cent (Australian Government 2009). The majority of imports coming in to Australia are goods and services that are not found in Australia.

5.3.3 Transparency and accountability within public procurement

Australia ranks 8th out of 185 countries on the Transparency International's 2011 Corruption Perception Index. This indicates an excellent level of transparency in governmental affairs, or at least a high level of public perception of fairness and accountability. AusTender is a government website that contains the bulk of the information concerning procurement and contracts in Australia. The website is used as a tool in the government's arsenal to improve the accountability and transparency of the procurement process in Australia. Information provided on the website includes:

- 'All Commonwealth procurement contracts and agency agreements above A\$10,000, including standing offers. Contract information reported on AusTender includes (but is not limited to) agency details; supplier details; contract details; contract value; start and end dates; procurement method; consultancy information; and confidentiality information.
- Agency Annual Procurement Plans (APPs), which draw suppliers' early attention to potential procurement opportunities. Agency APPs contain a short strategic procurement for the agency supported by details of any planned procurement.
- All new tendering opportunities – by registering on AusTender suppliers can "opt in" to be informed electronically about government tenders and other approaches to the market in areas of interest that they indicate' (Australian Government 2009).

The Government of Australia has also established a number of reforms in accountability and transparency; some of the measures include:

- ensuring that contractors with pending/ ongoing judicial suits against them, whether for non-payment of employee entitlements or other reasons, are not contracted to do any work for the government;
- providing clarity on the issues of whole-of-life costing³⁰ and value for money assessments which is really just making a thorough background check of a supplier's history, evaluating whether or not the provision of that service is needed/ validating its purpose to ensure money is spent responsibly;
- doing a risk management assessment (Australian Government 2009).

The Government of Australia has a number of programmes and initiatives in place to enhance and improve the procurement process. The Department of Innovation,

Industry, Science and Research is instrumental in providing linkages to procurement opportunities for many Australian businesses. The Supplier Access to Major Projects (SAMP) programme helps Australian industries by providing opportunities such as participation in large national and international projects (Australian Government 2009). The Industry Capability Network (ICN) 'helps businesses maximise opportunities that arise from purchasing requirements from both the government and private sectors (Australian Government 2009).

5.3.4 Fairness in the workplace

The Australian government recognises that the process of 'contracting could be used to undermine workers' entitlements' and so does not support this: 'The Government will only contract out when it is in the public interest, having regard to considerations such as the quality and accessibility of services and the implications for affected public sector employees' (Australian Government 2009).

The government has also implemented the Fair Work Act 2009 which is a set of principles guiding contractors both within and outside Australia. In addition, the government is committed to ensuring that persons from disadvantaged communities and persons with disabilities are not discriminated against (Australian Government 2009).

5.3.5 Women in the labour force

In Australia, AUSTRADE (the Australian Trade Commission), a government agency that promotes trade and business activities and opportunities, encourages women to participate in export activities. The agency identifies women who are already involved in the export business and presents them as role models for other women who may want to get involved in that sector (OECD 1998).

Standards Australia, an organisation recognised in Australia as the premier body specialising in the settings of standards, released a draft Gender Inclusive Job

³⁰ Refers to the total cost of ownership over the life of an asset.

Evaluation and Grading Standard DR AS 5376 in 2011 that seeks to:

- assist job evaluators to identify and address gender bias in job evaluation;
- prompt structured participation regarding evaluations; and
- provide guidance and principles to assist in the classification of jobs and procedures regarding salaries to minimize gender bias in how jobs are described, evaluated and graded by assessing employer practices for gender bias (Utz et al. 2011).

This draft standard will not only provide important recommendations to employers but also guidelines as to how employers can 'mitigate the risk of gender bias through good communication and keeping accurate and transparent documentation' (Utz et al. 2011).

Australia also has a programme called the Women in Global Business which aims to 'provide support to Australian businesswomen to trade and invest internationally' (Utz et al. 2011). The crux of the programme is to increase the participation of women in 'international trade and investment'. It aims to:

- bring together women involved in international trade and investment across Australia and its trading partners to help them develop sustainable business;
- encourage, support and advance the involvement of women achieving international business success;
- increase the profile of Australian businesswomen involved in international trade within the local and international business community; and
- connect Australian women to international networks to create business opportunities (Utz et al. 2011).

5.3.6 Australia summary

About one third of Australia's small and medium-sized enterprises (SMEs) are managed by women. Despite this, the number of women who actually participate in export and in businesses has been falling in recent times (AusTrade n.d). In 2009 only 9 per cent of all female-managed SMEs were exporting. In 2010, 9.2 per cent of the

Australian Stock Exchange (ASX200) boards included women. It was also found 'that 45% of the companies in Australia have no female managers.' Of Australian exporting companies, '15% have a female CEO, and 22% have a female who is in charge of the export section' (AusTrade 2008).

5.4 Country profiles: Jamaica

Box 5.4 Country overview: Jamaica

Population: 2,868,380 (1,419,153 males and 1,449,227 females)

Sex ratio: 1,021 females per 1,000 males (CIA 2011)

Gross domestic product: US\$13 billion

Gross domestic product per capita: US\$8,300.00

Gross domestic product based on purchasing-power-parity (PPP) per capita GDP: US\$4,500.00 (CIA 2011)

Major sectors: agriculture (5.8% of GDP), industry (30%) and services (64.3%) (CIA 2011)

Major exports: alumina, bauxite, sugar, rum, coffee, yams, beverages, chemicals, clothing, mineral fuels (Index Mundi n.d.).

Status of women: Currently women in Jamaica face a tradition of systemic institutional discrimination. Poor women constitute half of those receiving government benefits, while there is an average of two unemployed females for every unemployed male across rural and urban areas. Jamaica has used several international agreements regarding the status of women in addressing women's issues domestically, including the UN Convention on the Elimination of all forms of Discrimination against Women, as well as the ILO Convention On free movement of service and trade liberalisation, as adopted by the Caribbean Community (CARICOM). Legislative action has also been taken especially with respect to gender-based violence and other women's rights issues.

Trade policy: Current trade policy seeks to encourage sustainable, export led growth and development by expanding the export sector and enhancing productivity. The overall goal is to reverse 'the trade deficit by expanding exports over imports in the medium-to-long term' (WTO 2010).

5.4.1 Overview

Jamaica is an English-speaking Caribbean nation with a population of just under 2.9 million. It has a stable parliamentary political system stemming from its history of British colonial rule. Among its English-speaking Caribbean counterparts, Jamaica was the first country to achieve universal adult suffrage and to grant women the right to be elected to parliament (BWA 2011). Two political parties dominate domestic politics, namely the People's National Party (PNP) and the Jamaica Labour Party (JLP). In the 1970s and 1980s, the two parties had distinct ideological differences, with the PNP, under Michael Manley (1972–1980), espousing democratic socialism and increasing state ownership of the economy, and the JLP, under Edward Seaga (1980–1989), adopting a policy of economic liberalisation and privatisation (Sullivan 2006).

The Jamaican economy – based largely on tourism (the country's largest source of employment), bauxite production and sugar – was hit hard by Hurricane Ivan in 2004. As a result, economic growth was constrained to 1.2 per cent in 2004. An expected strong recovery in 2005 did not materialise because of poor weather conditions that further damaged the agricultural sector and stifled growth in the tourism sector. Estimated economic growth in 2005 was 1.8 per cent. Remittances from Jamaicans living abroad have become a leading source of foreign exchange and amounted to an estimated J\$1.5 billion in 2004. Unemployment, which averaged about 11.5 per cent in 2005, has been a persistent problem. There also has been concern about growing inflation over the past year, with a 2005 annual rate of almost 16 per cent that was fuelled by oil price increases and the impact of poor weather conditions



on food prices (Economist Intelligence Unit 2005). The country's external debt has risen substantially in recent years to an estimated J\$6.2 billion at the end of 2004, with the debt to gross domestic product (GDP) ratio estimated to be around 135 per cent. In 2010, external debt was estimated to have grown to J\$12.57 billion and the debt to GDP ratio fell to 126.1 per cent (CIA 2011).

The government has made debt reduction a priority, although this could constrain government expenditures for services in education, healthcare and security and could impede progress in improving the socio-economic conditions in the country. Other Caribbean nations, with the exception of Haiti and Guyana, have higher levels of human development, as measured by the UN's annual Human Development Index. With a per capita income of US\$8,300, Jamaica is classified by the World Bank as a lower middle income developing economy.

5.4.2 Gender

According to The Bureau of Women's Affairs (Gender Affairs) Kingston, Jamaica and The Gender Advisory Committee (BWG 2011), at the national level Jamaica has no gender policy that directly addresses the needs of both women and men. However, there is a 1987 National Policy Statement on Women, which was reviewed in 2001 in order to assess the effectiveness of its

strategies in the light of the shift in the discourse from 'Women in Development' towards 'Gender and Development'. Since its inception, the policy and its directives have been strengthened through various regional and international agreements, of which Jamaica is a part, aimed towards equity and justice in gender.

The Vision 2030 Jamaica National Development Plan makes a national commitment to redressing long-term systemic discrimination against women, identifying and overcoming the limitations to the empowerment of women and men and ultimately creating a society that values gender balance, equality and equity.

The Bureau of Women's Affairs (BWA), later renamed the Bureau of Gender Affairs (BGA), is the national machinery and agency for advocating for and supporting the implementation of the National Policy for Gender Equality (NPGE). Based on the most recent and available gender differentiated data, there are women and men experience significant inequalities in Jamaica. However, there is also a significant lack of available sex-disaggregated data across sectors which would enable policy-makers to formulate effective gender-equitable policy.

Starting in 2004, the BWA (now BGA), in conjunction with the Gender Advisory Committee (GAC) and in keeping with the Government's Consultation Code, conducted consultations with numerous stakeholders to determine the need for and inform the eventual parameters of the NPGE. The implementation of the NPGE is crucial to the attainment of Jamaica's development goals while meeting regional and international commitments towards gender equality and women's empowerment. The third Millennium Development Goal (MDG 3) aims at promoting gender equality and empowering women.

The rationale and purpose of the policy is to propel the political movement for gender equality by providing a policy framework of professional analysis. The vision statement of the policy presents a rights-based

approach to achieving gender equality, and promotes programmes which must be developed against an understanding of international commitments. Gender equality requires equal enjoyment by women and men of socially valued goods, opportunities, resources and rewards, while gender equity suggests that women and men have equal life chances. The NPGE aims to shift national policy-making and implementation from a gender neutral position, which presumes that women and men always access all socially valued goods equally, to a gender-aware position which acknowledges that barriers exist which prevent equal access and thus create inequality.

In an attempt to promote and exercise gender procurement policy since the 1990s Jamaica, along with other Caribbean countries, has engaged and reviewed governmental policy towards the attainment of the goal of gender equality and equity. To a large extent, this review process was facilitated and strengthened by the preparation for the Fourth World Conference on Women which allowed for assessments and reviews both of the achievements and the strategies for the promotion of gender equality.

With particular attention being focused on the 'elimination of discrimination' throughout the region, in the 1990s governments continued their focus on the elimination of direct and indirect forms of discrimination against women through legislative reform and through the implementation of gender-sensitive social policy. Simultaneously, however, many of the countries in the region entered into structural adjustment programmes which prioritised the need to significantly reduce public debt. Elemental to these policies was the reduction of expenditure in the public sector as well as the freezing of public sector wages. The effect of reduction in public expenditure on the social sector under these economic policies exacerbated poverty levels in the region, widened social inequalities and contributed towards the decline in living standards.

Women appear to have been negatively affected by these processes in specific

ways because of their location in the economy. On the one hand they are often unskilled and low-waged workers and on the other they have a primary role of economic reproduction in the household. State activity has, therefore, given rise to contradictory impacts. Even while ideological relations are changing towards equality, the material conditions for a significant proportion of women continue to be of central concern in the Caribbean sub-region. Caribbean states have sought to comply with the provisions of the Women's Convention through the removal of discriminatory laws and the enactment of enabling legislation which expands women's options for self-empowerment.

Within state structures gender inequality, where it exists, is grounded and supported less by discriminatory laws than by discriminatory administrative and bureaucratic practices based on dominant cultural norms and the roles and status of women and men. Examples of this can be found in some countries where teenage mothers are debarred or discouraged from continued access to secondary education though there is no similar bias in relation to teenage fathers.

Poverty continues to be a serious challenge for women. In 2004 just over 50 per cent of the J\$32 million paid out via government assistance programmes was paid out to women. Of the total benefits disbursed by the Programme for Advancement through Health and Education (PATH), approximately 90 per cent of the beneficiaries were women.

In order to address issues of poverty among women and to improve the lives of rural women, the Bureau of Gender Affairs (BGA) has been working with rural women who are engaged in various productive activities to help them find new and innovative means of livelihood, develop market strategies, promote their products on the local and regional markets, and increase their earnings. Several women/women's groups have benefited from the BGA's initiatives.

The employment rate of women in Jamaica is much higher than it was ten or even five years ago; however, recent data suggests

that it is now on the decline. In addition, women are by and large confined to jobs that perpetuate the cultural belief that they perform best in jobs that demonstrate their caring and nurturing skills. These jobs are further categorised as low paying jobs that do not improve the economic status of their holders. Also important to note is that, compared to men, women have a higher rate of unemployment, roughly twice that of men (CIA 2011). This is further compounded by the impact of HIV/AIDS, especially among the poor. The country has an adult HIV prevalence rate of over 1 per cent, with over 22,000 people living with AIDS. While the government has a national plan in place to combat the epidemic, the Joint United Nations Programme on HIV/AIDS (UNAIDS) maintains that the general lack of access to antiretroviral drugs in Jamaica contributes to the high mortality rate (UNAIDS 2004).

In Jamaica females continue to achieve higher levels of performance in academia, than their male counterparts. However, this has not necessarily translated into positions of power and decision-making. Gender disparity in representational politics is quite pronounced in the Jamaican experience. Although Jamaica has twice had a female prime minister, first in February 2006 and again at the end of 2011, it is worth noting that it has been the same woman. Also, parliament and local government are essentially male dominated. Within the sixty-member House of Representatives, there are 53 males (88.3% of the total) and seven females (11.7% of the total). The 21-member upper house (Senate) has 16 males (76.2% of the total) and five females (23.8% of the total), while in the Cabinet there are only three females (21.4% of the total) and 11 males (78.4% of the total) (IPU 2011).

The dominant political parties tend to have a slow turnover rate for candidates. Given that approach and traditional male dominance, there have been limited inroads for new candidates, with the result that female representation continues to remain relatively low. Discussions have recently taken place with the Bureau of Women's Affairs and the Jamaica Women's Political

Caucus, a non-partisan women's NGO group, concerning the implementation of a quota system to enhance women's participation in the political arena. The discussions revealed that the Westminster model of government practiced by Jamaica was not particularly conducive to a quota system and that constitutional reform would have to be undertaken to facilitate such a system. In the meantime it was suggested that the individual political parties be sensitised to the need for gender parity in representational politics and of their own accord make informed decisions on this issue to encourage, support and nominate more females candidates for political representation.

Legal reform, with respect to gender issues in Jamaica, has taken a direct rather than a strategic path. The process of increasing women's access to economic resources, and by extension decision-making, has been largely ignored. This is not necessarily by intention but rather through ignorance since direct concerns such as violence against women or the impact of HIV/AIDS generate more attention. The Government of Jamaica has continued to focus on the legislative agenda in order to address direct issues. The BGA has continued to support advocacy efforts for the amendments of gender-biased laws to ensure that women receive adequate protection under the law. Since adopting the Mexico Consensus, the government has had discussions and carried out amendments to various laws. These include the Property (Rights of Spouses) Act, 2004, the Maintenance Act, 2005, the Domestic Violence (Amendment) Act of 2004 and the Amendments to the Offences against the Person and the Incest (Punishment) Acts. These acts are by no means insignificant in a general sense. Our specific concern, however, is how public procurement policy is affected. Of the acts mentioned above, only the Property (Rights of Spouses) Act of 2004 can be seen to have some indirect effect. This act addresses how property is shared when a relationship ends, whether a legal or common law marriage (a minimum of five years). It is a gender-neutral act and increases access to

economic resources for women, justified by the recognition of the value of their unpaid domestic work.

A Gender Advisory Committee (GAC) was established to oversee the development of the National Gender Policy. One of the main objectives of the GAC was to assist the government in advancing a dual strategy towards the achievement of gender equality and the enhancement of the position of women and men. When completed, the National Gender Policy will facilitate more effective gender mainstreaming, as implementation of the policy will take a multi-sectoral approach. Already the BWA has embarked on a path in keeping with the Mexico Consensus to ensure the development of gender indicators and the collection of sex-disaggregated data in all public sector bodies so as to adequately inform policy design and development. To realise this goal, efforts are being made to institute gender focal points in each ministry of the government.

5.4.3 Trade

Since independence in 1962, Jamaica's trade policy has been responsive to its economic and political realities, both domestic and abroad. From 1957 to 1986, Jamaican trade policy consisted of 'quantitative restrictions as a means of engendering growth through export promotion and import substitution strategies' (Hudson 2003). This was in spite of its membership in the Caribbean Free Trade Association (CARIFTA), which called for a certain degree of trade liberalisation. Such a restrictive policy would have been made possible by whatever preferential treatment Jamaican goods enjoyed in foreign markets.

The 'Washington Consensus'-driven structural adjustment programmes of the 1980s heralded a change in trade policy. The adoption of these programmes saw the end of 'quantitative restrictions' and saw the implementation of tariff reforms. While restrictions were removed, the tariff base was increased as a counter-measure with the existing base of 21 per cent having the potential to grow to 34 per cent of general imports (Hudson 2003). The phasing out

of restrictions took place in two phases, stretching over a period of about a decade from 1982 to 1991. In these years CARICOM began to play an increasingly important role; and Jamaica's commitments based on regional agreements also shaped its trade policy. For example, the CARICOM adjustment of its Common External Tariff (CET) in 1992 meant that Jamaica, went through what was effectively a third phase of tariff reform, further increasing the tariff base while the rate of protection decreased from 15 per cent in 1993 to 11 per cent by 1998. By 2006, Jamaica's tariff rate was among the lowest, not just in the Caribbean but in Latin America as a whole with a rate at 7.3 per cent. This was a full two percentage points lower than its regional counterparts (World Bank 2010).

In 2008, Jamaica became party to an Economic Partnership Agreement (EPA) with the European Union which replaced in its entirety a previous ACP-EU Cotonou Agreement that afforded space for preferential treatment. Under the EPA, The EU committed to immediately removing all tariffs and quotas on Caribbean exports with the exception of sugar and rice which will get full duty-free and quota-free access by the end of 2009. The EPA has been criticised for being unfairly asymmetrical since the bulk of benefits are on the EU and not the CARICOM side. From a trade standpoint, it seems that Jamaica is hyper-liberalised to such an extent that it will prove to be an extreme challenge when trying to reverse its current trade imbalance. While the structural adjustment programmes of the 1980s and 1990s reduced the amount of duty charged on a particular good, it also increased the range of goods upon which tariffs could be charged as an off-setting measure. The EPA's design is more exploitative in that it seeks to remove all barriers for EU goods entering CARICOM markets, thus allowing them to compete with domestic producers on an equal footing. Considerations of economies of scale are relevant here since producers from micro-Caribbean economies will be forced to compete with multi-national corporations both at home and abroad. Deficiencies in research and design, marketing and logistics will undoubtedly be exposed.

The trade policy of Jamaica is remedial in nature since existing conditions are unfavourable. Following a brief period of expansion in the 1950s and 1960s, Jamaica has realised little economic growth (Bloom et al. 2001). This has been further compounded in recent times. According to the Trade Policy Review Body of the WTO, 'Jamaica has been, more than most countries, negatively impacted by the global financial crisis which began in mid-2008. The impact is strongest in Jamaica's tradable industries, which depend on external demand from North America and Europe' (WTO 2010). As a CARICOM member state and because of its concerns as a small developing economy, Jamaica has advocated the use of multilateral, regional and bilateral trade agreements. The goal for all the agreements is always the same, 'to maintain and improve market access with a view to fostering increased market penetration' (WTO 2010), in the hope that this in turn helps to improve competitiveness in domestic markets and by extension productivity.

5.4.4 Good governance

In an assessment of democracy and governance in Jamaica, international scholar Dr Ivelaw Griffith notes that 'there is a certain symbiosis between political power and public policy, as it is the exercise of political power and class, ideological, or other interests guiding it that influence the kind of policy that is designed and the manner in which it is implemented' (Griffith 2001). This is of particular concern in the Jamaican context since fervour about political parties and thus access to political power has at times in the past been a site of violent action. The relevance of this as a concern is decreasing as recent elections have been carried out in a more civil manner. Such conflagrations merit mention though, because of their impact on rule of law and its importance to governance.

Recent literature and study has related good governance to the wider theme of democracy. Transparency and accountability ideals under good governance contribute to

improving the efficiency and effectiveness of state processes and therefore are concerned with public procurement. A report generated by a Commonwealth Secretariat regional symposium on 'Local Democracy and Good Governance in the Caribbean' notes that in order for accountability to be more effective and wider ranging, 'policies should be set jointly by central and local government rather than just be handed down' (Commonwealth Secretariat 2004). This not only applies to accountability but to transparency and any general policy objectives. By including both local and central government, the gap between policy and practice is reduced. Transparency and accountability are relevant to the Jamaican context as they can help to address corruption, which has been a concern of the Jamaican public administrative system (Neuman 2002). A more transparent public service reduces the probability of corrupt practices tainting procurement processes. Legislatively, Jamaica has implemented a variety of tools to ensure that the procurement process consists of the necessary checks and balances that guarantee high levels of transparency and accountability. The Office of a Contractor General is a main component of this as such an office acts as the central agency for ensuring that public procurement practices in Jamaica are relatively free from corruptive influences.

5.4.5 Public procurement policy in Jamaica

According to the Jamaican Government Information Service, the Government of Jamaica Procurement Procedures are determined and disseminated by the Cabinet of the Government of Jamaica. The Office of the Contractor General (OCG) exists in an auditing capacity and fulfils a transparency function because its concern is in monitoring and investigating awards and terminations of government contracts and ensuring that these contracts have been carried out in compliance with the relevant procurement procedures.

Jamaica is an example of a Caribbean country that has successfully developed and implemented a public procurement policy. Its 2002 'Policy on Public Sector Procurement' was developed to address fairness, integrity and public confidence in the procurement process. With respect to combating the marginalisation of women, this policy is further enhanced by the Jamaican 'National Policy Statement' which specifically addresses concerns about fair wages, working conditions and gender equality in the workplace, ensuring that the provision and distribution of basic services is the same for men and women.

5.4.6 Transparency and accountability within public procurement

Jamaica is ranked 86th out of 125 nations on Transparency International's global corruption perception index. This places Jamaica within the middle range of corruption perception within the Caribbean region. The Second Revised Handbook of Public Sector Procurement Procedures (SRHPP) is the result of an attempt to make public procurement in Jamaica more transparent and accountable. It contains the applicable procedures which must be strictly adhered to by every public body which seeks to engage in a Government of Jamaica procurement or contract award activity.

In 2002, Jamaica passed a Policy on Public Sector Procurement, which authorises the Jamaican government to use its purchasing power to stimulate local producers and to use government contracts as part of a national development strategy. The Jamaican policy is similar to the US's 'Buy America Act', which restricts federal purchases to US products and was exempted from NAFTA. Yet, the FTAA (Free Trade Area on the Americas Agreement) on government procurement could disprove the Jamaican public sector procurement policy depending on how the policy is implemented and what procurement commitments Jamaica makes under the FTAA.

5.4.7 Limitations of public procurement policy in Jamaica

With the spate of technological advances, the Jamaican government could save up to 30 per cent of its spending on items outside of debt and wages when it implements an electronic system aimed at improving efficiency in the public procurement process that will be funded in part by the Inter-American Development Bank (IDB). Recently the IDB approved a US\$900,000 grant to the government to support the development of the e-procurement system in Jamaica, which will provide a single portal to government procuring and tendering agencies and suppliers and will automate activities performed by these parties by integrating them on a single network. In technical documents published on its website, the IDB noted that greater efficiency in public procurement will lead to 'significant savings in government purchases due to greater competition among suppliers, better comparison of prices, and reductions in transaction costs'. As much as these adjustments to efficiency will result in increased revenue, there are still concerns that the necessary administrative infrastructure set up to facilitate procedures, initiatives and activities pertaining to procurement, is insufficient (EC 2008).

Another issue of contention arises from Jamaica's status as a 'developing country'. As noted by Joseph Stiglitz about all nations so branded, 'Government procurement policies have important economic and social roles in developing countries which could be curtailed if governments were mandated to observe national treatment principles.' The above statement reflects the potential for conflicts with internal legislation and current procurement methods. Jamaica is an exception here to a degree, because of its willingness to try to streamline legislation and practice (Girvan 2010). Issues of sovereignty also arise, especially when attempting to adhere to international standards that may not reflect the sensibilities of the domestic situation (Girvan 2010).

Girvan points out another similar issue that is applicable to the Jamaican case, namely when entering into FTAs that can also have an impact on sovereignty. Such agreements can affect the ability of the government to use local suppliers as a policy instrument and in this way compromises sovereignty. Also, because agreements such as the FTAA can at times be asymmetrical, the resulting imbalance means that a greater share of the benefits of any agreement move in the direction of the more powerful states. Within the setup of the FTAA, Jamaica is not poised to benefit (Girvan 2010). Also, under the umbrella of the FTAA, any drives toward regional procurement on a CARICOM level are regarded as secondary, thus harming the development of industrial and service supply capacities ensuring that trade asymmetries are maintained.

5.4.8 Gender equality in Jamaica

Jamaica is adamantly against any form of discrimination of its citizens. It has implemented policy to ensure that women are facilitated to a large extent as evidenced by its adoption of the UN Convention on the Elimination of All Forms of Discrimination against Women. Constitutional prohibitions against discrimination on the basis of sex exist in most independent Caribbean countries. But similar prohibitions against discriminatory treatment on the basis of sex do not generally extend to the acts of non-state actors in most of the countries in the region. Still, governmental response to unequal treatment by non-state actors is being advanced to the extension of protection for women from some aspects of discriminatory treatment in the workplace. Specific maternity protection legislation now exists in most countries. In Saint Lucia the highly controversial provision which rendered an unmarried teacher liable to dismissal on the basis of pregnancy was finally revoked in the face of sustained campaigning by organisations representing teachers and women's rights.

Jamaica has sanctioned legislative changes that enhance the status of women, including laws pertaining to child maintenance, citizenship and matrimony. Examples of

these legislative tools include, The Property (Rights of Spouses) Act, 2004 which introduced new statutory rules to provide for the equitable division of property between spouses upon the breakdown of a marriage or a common law relationship after five years. A draft Sexual Harassment Policy has also been finalised, paving the way for enactment of legislation in this area.

5.4.9 Jamaica summary

Jamaica has taken steps to address concerns regarding the efficiency of its public procurement process. However, there is still significant room for improvement. There is no specific focus on engaging more women to become part of the process. One way to address this is to extend the constitutional protection against discrimination to apply to professional partnerships, professional or trade organisations, qualifying bodies, vocational training bodies and employment agencies as well as to the provision of goods, services and facilities. By widening the range of institutions that are liable when discrimination takes place, enforcement of the law also increases since organisations will try to avoid any penalties, financial or otherwise, associated with acts of discrimination.

From a trade policy standpoint, the reliance on neo-liberal models of economic development is a concern. While these models promise increased benefits for developing countries, evidence points to the contrary. This is illustrated by the asymmetrical nature of the Economic Partnership Agreement signed between Jamaica and the EU. Under such unfavourable conditions Jamaica cannot realise a trade surplus, and it is suspected that its trade imbalance will become even more pronounced. Thus, instead of increasing competitiveness and enhancing productivity, such actions may actually cause further contractions in the Jamaican economy since goods have less access to markets and market share.

Chapter 6

Conclusion

Public procurement policy concerns the acquisition of goods and services by a public procurement entity. The efficiency of this process is beneficial on two levels. First, because PPP commands a significant share of GDP, any inefficient processes would represent a high level of waste, which could be particularly detrimental to developing economies. Second, a basic law of economics recognises that we live in a world of scarce and mostly non-renewable resources. PPP should be as efficient as possible so as to maximise use of these resources and to avoid potential market distortions. A main factor driving inefficiency in the developing world is corruption. Efforts to standardise PPP globally have led to the drafting of a model law on public procurement by UNCITRAL. This model law stresses the importance of adhering to good governance ideals such as transparency and accountability. These ideals directly address the issue of corruption. Attempts to find a common regulatory basis for PPP have proved elusive because of the vast difference in PPP approaches in developed and developing countries. Harmonisation activities become challenging in a developing economy climate since extensive capacity-building activities are often needed to ensure the required levels of transparency and accountability. Good governance battles against corruption have also exposed cultural challenges as some argue that good governance seeks to export European ideals which may not be relevant for parts of South-East Asia and Africa. This is not to say that PPP reform is a lost cause but it should focus more on dealing with issues and understandings of corruption before trying to address issues of harmonisation.

As noted earlier, PPP is important from a trade perspective because of the large percentage share of public expenditure in the domestic economy. This is of greater proportion in developing nations, a fact which is significant for the Commonwealth since most of its member countries fit this designation. From a development paradigm, there is no causal relationship between human development and trade, thus if trade is to be exploited for its development benefits, there must be a systematic and co-ordinated policy ensuring that such opportunities are being maximised. Taking gender into account further complicates such efforts. A feminist reading of the international trade regime would conclude that gender bias is present. While trade may appear gender neutral on the surface, the international trading system is wrought with bias. As trade liberalisation has gained prominence, it has become apparent that there are differences not only between nations but also within nations. It is evident that, as Wallerstein noted in his world systems theory, there is a gap between 'core' and 'periphery' nations. However, such designations may exist within national borders. Therefore in countries such as Kenya or India, PPP reform may be easier to implement in urban areas than rural ones because of this core-periphery divide.

Increased trade liberalisation can have an impact on the composition of the workforce. USAID notes that the impact of liberalisation activity on men and women can be vastly different. In developing countries, trade liberalisation has often led to increased employment opportunities. As much as these jobs may be low paying, temporary and labour intensive in nature, they represent



an improved economic position because women are able to earn more in these spheres than in their traditional domestic roles which are unpaid. Increased female access to job markets may have resulting positive effects on access to income and financial bargaining power yet these do not automatically translate into gender equality.

What the case studies of this project have revealed is that the primacy of addressing gender inequalities and in public procurement specifically is determined in part by the level to which gender inequality affects social cohesion. For example, in societies where tribal allegiances are the predominant determinant of social hierarchy and political and economic access, gender is ascribed a subordinate role in projects attempting to promote inclusiveness. Enacting affirmative action legislation and adopting policies, which establish quotas or give preference to women and minority groups, while a step in the right direction is insufficient to provide access to government tenders by women and minority-owned enterprises and MSMEs. The underlying cause of this potential gap between a policy of inclusion and its practice, is that in many of the developing countries of the Commonwealth the majority of women are minimally educated if at all, and they are relegated to working in the informal

sector, in low paying unskilled jobs. Providing widespread access to education for women, credit for entrepreneurship and other developmental aids is the foundation of supporting gendered public procurement.

What does a more effective global public procurement policy look like and what needs to be done?

This research has demonstrated the importance of public procurement policy for increasing opportunities for small and medium sized businesses and how it can enhance opportunities for women in business. Based on the research and case studies presented the following practical solutions can be considered in order to overcome the indirect barriers that inadvertently prevent women from participating in public procurement which is seemingly 'gender neutral':

- 1 The importance of a transparent public procurement policy that is also gendered.

While there is a need for more transparent procurement policies to eradicate corruption, the rules and regulations put in place to ensure value for money must also take into account how they can inadvertently

restrict small and medium sized women owned businesses which may not have the capacity to implement the necessary policies and procedures required to be compliant.

2 Procurement policies should consider to what extent they benefit rural areas and more investigation needs to be done on how to increase rural participation.

The case study from Kenya highlighted how procurement policy tends to favour urban over rural businesses due to the lack of ability to enforce policies within rural areas where skills are lacking. It is also questionable how far the benefits of trade liberalisation can benefit rural communities when activities are often focused in urban areas. Where most procurement opportunities in rural areas are focused on agriculture, women should be assisted to gain access to these opportunities through improved land rights and access to credit for developing their own businesses in order to compete fairly. Diversification of procurement in rural areas is also required so that those with limited or no access to land for business can participate in supplying other goods and services.

3 The disparities between nations should be considered in the development of global procurement policies and proactive policies are needed to protect and enhance local businesses.

The development of any global standard procurement policy must take into account the differences between nations. While trade liberalisation and international procurement can be seen to boost economies, it can also be detrimental and does not necessarily translate into improved socio-economic outcomes. In the case of Jamaica, neo-liberal policy reform, while boosting the economy, was not specifically gendered and therefore may not automatically enhance the performance of small, medium and women owned enterprises. International procurement can further decrease access to local businesses which are unable to compete on such a scale and proactive policies are required for their protection.

4. Need for increased capacity building and technical assistance for women's business to access national and international trading opportunities on a level playing field

It is essential for policies to be developed in support of education, training and business development for women's businesses which are unable to compete due to a current lack of skills. A move towards more transparent procurement policies must therefore recognise the need for more gender responsive budgeting to include sensitisation training for those responsible for procurement so that systems and processes, including the writing of tenders, are more inclusive. Further research to identify where technical assistance is required and the adoption of more inclusive public procurement programmes will help build the capacity of small and medium women enterprises to gain greater access this arena.

5. Proactive policies to engage women businesses should be initiated alongside wider policy reforms to address inequalities within nations

There is a need for more proactive policies to include women businesses access to procurement. As has been shown in the case of India, these policies must go beyond women focused initiatives such as increasing small and medium enterprise and microfinance in order for enterprises for women to transcend to the next level. Policies should take into account what prohibits access to public procurement and international trade such as education, class and rural locations so that new procedures developed are not only for the elite but can benefit all society.

6. Sensitisation of men to ensure women businesses can benefit without having negative implications in other spheres

For equality of access to global trade it is important to sensitise men to ensure that increased economic prosperity for women in business does not lead to an increase in gender based violence or power imbalances within the home. The importance of equal pay for women and men in this instance

is paramount to ensure a more accepting environment where gaining in business does not lead to greater social restrictions.

7. Need to widen policies beyond the local to the global arena and encourage women to take on more leadership roles within business.

Targeting for women as we have seen in the case of India, has been limited to specific areas of business. There is a need to widen the access to international markets so that women businesses can compete on a level playing field on a global scale. Australia has made significant progress through the creation of women's networks and building linkages on a national scale but this has not translated to greater international exposure. There is a need to increase women networks internationally and to enhance the capacity of women to take on decision making roles in order to effect any significant change.

By considering the gender implications for PPP and translating these into practice as defined above, PPP can be used as a vehicle to tap into the greater potential for women enterprises. Through adopting more inclusive and diverse policies and encouraging proactive support where technical skill and education are lacking, PPP can play a significant role in poverty reduction through boosting employment and income for women to ensure real and sustainable social and economic benefits.

8. More research to identify existing gaps and positively impact on women-owned businesses at all levels

In summary, more work remains to be done in identifying the analytical gaps to demonstrate how improvements in transparency and widening access to SMEs could have a positive effect on market access for women-owned businesses at the national and international level. Further research would strengthen the argument for widening access to government contracts, by presenting data and evidence, upon which policy-makers (and other interested parties) could draw when constructing new proposals on public procurement policy.

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