

Applying the Principles for Good International Engagement in Fragile States and Situations to Strengthen and Transform Public Procurement Systems

INTRODUCTION¹

The donor community focuses significant time, effort and resources, on countries that have critical needs at a point in time, often as a result of natural disaster, but frequently to help build stable and better performing states for countries that are emerging from conflict. In addition, there are many countries that fall into the "fragile" category on the basis of size, location and geography, or other conditions that makes these countries particularly vulnerable to crisis situations or susceptible to conflict. Much of this international engagement has not achieved the desired results, with many such fragile states unable to exit from poverty and insecurity and consequently remaining continuously vulnerable to the next disaster or re-emergence of conflict.

There is a long list of publications, including many recent documents that attempt to capture the key features of what are referred to "fragile states" and catalog some of the many lessons that have emerged from successful and unsuccessful engagement with such countries. Few of the publications deal directly with building, strengthening or transforming the public procurement system in these countries. The purpose of this discussion paper is to take some of the knowledge and learning emerging from such publications and apply it to the very practical and necessary government function of obtaining goods, works and services to meet the needs of the citizens and fulfill the government's obligation to provide basic services, peace, security and jobs.²

The OECD has issued a publication *"International Engagement in Fragile States: Can't We Do Better?"*³. The publication identifies ten basic principles which are listed in the following paragraphs, to support the long term vision "to build effective, legitimate, and resilient state institutions, capable of engaging productively with their people to promote sustained development." This paper will use these principles to frame a discussion around public procurement, including lessons particular to this area of development. Country examples when available will be used to point out both successes and failures, but most importantly to catalog and share useful information that can help countries and development partners address the issues they face more effectively in the future. This publication is intended to generate discussion and feedback and hopefully the feedback will add to the knowledge bank not only for

¹ Written by Pamela Bigart for UNDP and the Procurement Capacity Development Centre as part of a series of discussion papers.

² "World Development Report 2011: Conflict, Security and Development", World Bank.

³ "Conflict and Fragility: International Engagement in Fragile States; Can't We Do Better?" OECD Preliminary version, 2011.

countries in fragile situations, but all countries that can benefit from strengthening the quality and performance of their public procurement system.

Lessons Learned from CPAR and MAPS

- The calibration of the CPAR and the MAPS reflect what is considered good practice, but there are no countries that fully meet the good practice model and this is especially true for fragile states.
- Good practice standards must be re-thought in the context of the country and the key results that the country seeks to achieve. Maturity and stage of development of the country's overall public sector and governance systems must be taken into consideration.
- CPAR and MAPS are useful tools when they are used to assess and understand the country context, but they are less useful when standardized solutions emerge from the assessments.

PRINCIPLE 1 - Take Context as the Starting Point

Every country is different. This is a known fact; yet in dealing with countries, the development community and the countries supported by development aid rely on models and tools that are based on "good practice" and tend to assume that while all countries may start out different, through the adoption of good practices, they should end up looking alike. There are good reasons why "good practice" is useful and particularly so for the area of procurement where the global marketplace is driving all countries to build procurement systems that recognize agreed principles and procedures and enable the efficient flow of goods, works and services not only between countries, but within countries using domestic markets. As a result, many good practices have been identified for public procurement systems regardless of the country and its current state or level of development. Nevertheless, it is increasingly clear that good practices become better practices when they are reflective of and consistent with the country context.

The two main tools widely recognized for use in gathering information on the country context for public procurement are the Country Procurement Assessment Review (CPAR) and the Methodology for Assessment of Procurement Systems (MAPS). The CPAR, developed by the World Bank but widely accepted by countries and the donor community, relies heavily on internationally agreed principles for good procurement that derive from the World Bank and other IFI procurement policies; the WTO's Government Procurement Agreement; and the UNCITRAL Model Procurement Law. The second tool, MAPS was created through a multi-donor, multi-country process of identifying key benchmarks for a well performing procurement system as part of the overall governance and public financial management system in the country. This tool was calibrated at what was considered the "good practice" level and resulted in 54 measurable and scored indicators or benchmarks. The MAPS has been applied in more than 60

countries since its introduction in mid-2006 and is now commonly part of a CPAR, although many are done as standalone assessments.

The above tools are introduced under this principle of taking the country context as the starting point. However, after more than twenty-five years of experience with these tools, the donor community is still struggling with how to best apply and use the tools in fragile states. The following box identifies some lessons that have emerged over time which are helping address the use of tools built around good or best practice in environments where achieving the needed result may run counter to the collective wisdom.

PRINCIPLE 2 - Do No Harm

The starting point for a procurement reform initiative in most countries seeking to build or transform an existing system has usually been an assessment using one of the above mentioned tools. A key lesson learned as stated above, "standardized solutions" should not be an outcome of application of a standardized tool. The principle of "do no harm" requires that solutions to one aspect of public sector governance, do not conflict or negatively affect the broader goals and objectives of building a stable and secure state.

Procurement reform initiatives that rely on standardized solutions have led to setbacks in countries, either when the solution proposed is implemented without consideration of the broader public sector environment or when a standardized solution is implemented without consideration of country context. Several examples exist that may not have resulted in long term harm to a country, but certainly resulted in setbacks and delays in building a well functioning procurement system.

Some Country Examples:

Timor Leste: Following the conflict and subsequent independence of Timor Leste from Indonesia, the country was left with little or no governance capacity. The United Nations was brought in to support basic functions (1999-2002), including handling of procurement in order to provide for goods, works and services needed to rebuild as governance systems were established. The withdrawal of UN support in 2002 is now seen as having been premature, and implemented without ensuring that the necessary basic capacity existed to take over and manage key governance systems. Although there was no intention to leave Timor Leste in a difficult situation, the failure to plan and execute a gradual handover and transition left the country without the needed capacity to manage procurement efficiently and effectively. The functioning of the procurement system is still hampered by mistrust and perceptions of corruption. A strong lesson was learned by the donor community regarding handover of key governance systems and the need to ensure readiness within the public sector to assume responsibility for these systems. These lessons have carried over into **Afghanistan** where much of the procurement is still undertaken following donor rules and with

strong donor oversight, while capacity is being developed in procuring entities and certification of readiness is part of the decentralization of procurement authority.

Rwanda: Following the end of conflict and genocide in Rwanda, the country set out on a major program of rebuilding the public sector under a newly formed government. Rwanda was able to build on existing systems, but determined to reform governance systems across the board as part of a strong desire to move forward and away from their destructive past. The procurement system was one of the areas of reform. The World Bank and other donors worked together with the country to quickly prepare a new legal framework based on the UNCITRAL Model Law. However, the country found that it was not able to operate under the new law as it had not been customized to the country (a process which was complicated by a primarily francophone history but a desire to transition to an Anglophone model). A new draft law was prepared that was more reflective of the country's priorities and long term vision. The country is still struggling to make their procurement legal framework fit the needs of the country while still meeting the demands of the international donor community. The lesson learned was a better understanding of how to use the UNCITRAL Model Law and a general understanding that the procurement legal framework established for a country undergoing broad public sector reform and development will likely require modifications as country conditions and priorities are changing. Most advice provided to countries developing a new law for procurement focuses on achieving key internationally agreed principles and leaving implementation details to regulations that will govern procedural compliance while maintaining consistency with the principles embedded in law.

PRINCIPLE 3 - Focus on Statebuilding as the Central Objective

The OECD paper highlights the need to "move beyond institution building towards fostering greater and deeper interaction between the state and society", in particular emphasizing the need to strengthen the dialogue between the state and civil society. Under this principle, the area of engagement with regard to procurement reform actually fares very well. Procurement requires engagement with a segment of the civil society, that of the private sector. Procurement is also clearly recognized as a means for government (the state) to meet the needs of the citizens (civil society).

Having said the above, it is clear that in order for public procurement to take place, there needs to be certain elements of government in place in order to provide financial resources, identify need/demand, develop and allocate the budget, sign legally enforceable contracts and accept good, works or services, make payment and distribute the goods, works and services to the intended beneficiaries.

South Sudan. South Sudan is a new nation, created in July 2011. It is in the process of building governance institutions, including an institutional setup to develop and oversee public procurement. Prior to the formation of the new country, various forms of donor driven procurement regulations were used to finance goods, works and services. Now the country is looking to pass its own regulatory framework to manage this important function. At a recent workshop, the country demonstrated that strong coalitions have already formed between the private sector, the newly forming governance institutions and civil society. The civil society and the private sector reminded the government representatives of the need to be inclusive and bring these key stakeholders into the process of building the procurement system.

PRINCIPLE 4 - Prioritize Prevention

The premise behind this principle is "action today can significantly reduce the risk of future conflict and other crisis". As noted above, [development of the procurement system needs to take place in the context of functioning public sector governance systems](#). When reforms are not properly sequenced, they do not take hold and become a fully sustainable part of the governance system. Yet, procurement is needed and it must function at least sufficiently to provide the state and governance system with basic service. This is a dilemma that faces many new states. There are several solutions which provide the needed service while the state governance structures continue to grow.

- Reliance on procurement agents...a form of contracting out the function while capacity and systems in the country are built, reformed or have sufficiently matured.
- Reliance on UN Agencies: the UN is often the first responder following crisis and is able to establish and carry out basic procurement functions until the authority can be transferred to a legitimate government.
- Centralized procurement: this is often used in countries where the capacity is generally weak when moving away from central government. It enables the development of a core of capacity which can form the basis for decentralization as capacity grows.
- Reliance on donor driven systems such as a multi-donor trust fund that enable the heavy influx of donor funds that usually follows cessation of conflict or a crisis situation, to be managed following agreed procurement procedures while governance systems are being built or until such time as sufficient capacity exists for the country's procurement system to take over.

Country Example: In [Rwanda](#), following the cessation of conflict, a strong centralized procurement unit was formed under the Ministry of Finance. This unit was able to undertake needed procurement, oversee procurement undertaken by other procuring entities (with limited authority), prepare the needed legislative and regulatory framework, train staff in procuring entities and finally after a long transition, begin the process of decentralization which was mandated by their Constitution. This process is nearly complete but has taken significant time. However,

during this time, procurement services were provided and able to meet the basic needs of the growing governance system and of the citizens.

PRINCIPLE 5 - Recognize the Links between Political, Security and Development Objectives

This principle recognizes that growth and development in fragile states requires that political, security and development be addressed in an integrated manner. This continues to be true when moving down to the level of governance systems where it is clear that the procurement system needs to be integrated with the development of other linked systems. Increasingly, countries are using assessment tools like Public Expenditure and Financial Accountability (PEFA)⁴ and the MAPS that recognize the linkages between procurement and other public sector management systems. Sequencing and prioritization are key components of a successful change management strategy. The Task Force on Procurement publication "Strengthening Country Procurement Systems: Results and Opportunities" recognized that procurement reform was most successful in those countries where it was an integral part of a broader public sector reform initiative. It also recognized that the development of the procurement system goes through many stages as the country continues to grow capacity and other governance systems mature. It is not necessary to develop a world class system for procurement until the country is ready to operate and thrive under such a system. Most countries engage in a process of continuous growth and improvement. [Focusing on the key principles that underpin a well functioning procurement system provides flexibility and opportunity for growth overtime without sacrificing the basic service that procurement provides of obtaining needed goods, works and services to secure citizens needs and rights to security and stability.](#)

As countries mature and stabilize, procurement is increasingly used as a political and policy tool. Many developed countries consistently use the procurement system to implement government priorities beyond obtaining economy and efficiency in use of public funds. The concept of "value for money" enables governments to identify a range of criteria beyond "lowest acceptable price" that will have an influence on the award of contracts. These criteria can include social and economic criteria related to development of disadvantaged sectors; criteria related to environmental issues; and an important emerging area is criteria related to performance. There is a need for government to carefully manage and balance the use of procurement as a policy tool as this can also introduce more potential for manipulation, abuse and corruption. This is why there remains a need to ensure balance of "value for money" criteria with the basic principles that underpin a well performing procurement system.

PRINCIPLE 6 - Promote Non-Discrimination as a Basis for Inclusive and Stable Societies

This principle recognizes that fragility and conflict is related to real or perceived discrimination and that such discrimination can affect service delivery. This principle clearly has an impact on a well functioning procurement

⁴ PEFA is a performance measurement framework tool for public financial management, including procurement, introduced in 2005 and created as a result of a multi-donor collaboration between the World Bank, the EC, the IMF and several bilateral donors.

system. A key principle of procurement is the use of fair and open competition as the default for the purchase of goods, works and services. This principle is implemented by ensuring that the selection and award criteria for contracts is clearly defined and based on factors related to capacity to perform and deliver the contracted goods, works or services. Systems based on patronage and favoritism will contribute to discrimination and corruption. Techniques used to build non-discrimination and inclusiveness in the procurement of goods, works and services include access to information and transparency. Even fragile states have the ability to adhere to the basic principle of fair and open competition and can counter perceived discrimination by publication of opportunities, adherence to transparent procedures and publication of contract awards. Access to information is a key component of building trust between the government and citizens leading to more stable societies. This information enables stakeholders to hold those entrusted with implementation accountable for compliance with process and achievement of results.

Community Driven Development: Engagement with communities is seen as contributing to building stable societies in fragile states. Procurement can be taken down to the community level where the principles of non-discrimination and inclusiveness are demonstrated in practice. Use of basic communication techniques helps to ensure access to information and allows the members of the community to oversee the process of procurement, performance of the contract and delivery of the services to the beneficiaries in the community.

PRINCIPLE 7 - Align with Local Priorities in Different Ways in Different Contexts

This principle encourages donors to align their support with national strategies. In looking at support to procurement reform, it is becoming increasingly important to look across a range of national strategies and priorities in order to better understand the political will and determine the stakeholders who will gain from a reform initiative and who may lose. Some countries have found that a sectoral approach to procurement reform can provide the entry point for a broader reform initiative. This has been particularly true for sectors like health and education where a well formed and strategic approach to procurement can quickly demonstrate benefits in terms of quality and cost savings, but importantly to addressing key stakeholders needs.

Country Examples: Several countries have been able to further a procurement reform initiative by demonstrating savings and results obtained through a sectoral strategy. Recently, participants in a workshop on procurement reform and coalition building from [Samoa](#) determined the best approach for achieving results that could drive a broader government reform would be to demonstrate the impact on education of better purchase of classroom materials and facilities. This effort would not only have an impact on quality of education made available, but would also have an impact on keeping children in school and addressing a growing social crisis driven by poor education facilities. Other countries such as [Liberia](#) and [Sierra Leone](#) have focused on the health sector to drive down the cost of drugs and expand service delivery as a way of demonstrating the value of better procurement.

PRINCIPLE 8 - Agree on Practical Coordination Mechanisms

This principle looks to better donor coordination as a means to achieving results even in the absence of strong government leadership. [Coordination among donors on support to procurement and procurement reform has been made easier by the fact that good procurement practices are generally recognized and agreed among donors.](#) As noted earlier, procurement relies on adherence to globally agreed good practices that help to facilitate country to country trade and flow of goods. Yet, bad practices still abound wherein donors impose overly detailed procurement rules and regulations that confuse, drain capacity and create an environment that contributes to poor practices and corruption. The recent push to increase donor reliance on country systems is one of the efforts to foster coordination. However, until such time as the country system exists and functions to an acceptable level, donors need to agree on aligned methods of procurement that ensure principles of good practice are met without introducing multiple systems. Some success has been achieved through the use of multi-donor trust funds that operate against an agreed set of procurement procedures and through the use of sector wide approaches that bring multiple donors together around a set of procurement procedures which may be those of the country.

PRINCIPLE 9 - Act Fast...But Stay Engaged Long Enough to Give Success a Chance

This principle when applied to the area of procurement reform is implemented in several ways. In a post conflict or post crisis situation, procurement is handled in many ways. Emergency aid may arrive in the form of goods, works and services being supplied from outside sources. As the situation stabilizes, procurement agents or UN agencies may provide needed procurement services for a period of time while governance systems are reformed and begin functioning. During a transition phase, the external agents may work with the country to develop the basic institutional, legal and governance frameworks necessary for procurement responsibility to shift to the government. This transition period will usually be accompanied by training and a range of activities intended to build the capacity, management and control systems that are needed for procurement to work. Procurement reform has been noted to follow general patterns which now are called first generation and next generation changes.

Regional Initiatives: Donors have continued to support several regional initiatives from UEMOA in West Africa to CARICOM in the Caribbean. These initiatives have taken time to take hold and because they involve multiple countries, they have often taken time to implement key goals and objectives. However, member countries are seeing the benefits of cooperation and coordination of procurement systems. These involve improved country to country sale of goods, works and services that open opportunities for growth of the private sector, increased competition leading to better quality and prices and the ability to consolidate requirements providing for a better position in the global marketplace.

One constant however in all countries is that the reform and development efforts take time and do not always follow a straight line to success. [A key development that has grown with technology and access to information is the benefit of country to country sharing of knowledge and experiences.](#) This is an area where donors can continue to provide opportunities and support for knowledge sharing between countries that may be facing similar challenges.

PRINCIPLE 10 - Avoid Pockets of Exclusion

This principle addresses the uneven flow of aid to countries and within countries. All procurement systems are linked to sources of funding whether the money comes from a country's own resources or whether the funds come from external sources. Procurement is a downstream distribution system which when done well, is based on non-discrimination and open competition. Procurement systems generally include some areas of preference that enable the country to use funds in ways that are exempted from the open competition principle. Donors should continue to make countries aware of the drawbacks of preference systems that generally outweigh perceived shorter term gains. One way of doing this is for donor countries to act responsibly with regard to tied aid and with regard to preferences that are applied within their own countries. Another way is to help build structures within the country that support the development of the private sector including access to financing, advice and markets.

Summary: This paper does not address the full range of experiences and growing base of knowledge about procurement reform. It does take a recognized set of principles for engagement by the international community with countries that are small, fragile or conflict affected and tries to link some of the knowledge and experience of procurement reform to those principles. As a discussion paper, it has raised some points but hopefully opened the door for a broader discussion and sharing of thoughts leading to improved practices and better outcomes.



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