

# **A Study of Corrupt Practices in Public Procurement in Malawi**

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A Dissertation presented to Columbia Commonwealth  
University in Partial Fulfillment of the Requirements for  
the Award of the Degree of Doctor of Philosophy in  
Business Administration (Strategic Management)

December, 2015

## DECLARATION OF AUTHENTICITY

I, Emmanuel Paul Tofire CHISESA, do hereby declare that this Dissertation is the result of my own investigation and research and that it has not been submitted in part or in full for any degree at any other University. I understand that if at any time it is shown that I have significantly misrepresented material presented to Columbia Commonwealth University/Malawi, any degree or credits awarded to me on the basis of that material may be revoked



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MALAWI BY EMMANUEL PAUL TOFIRE CHISESA***

**APPROVAL BY THESIS SUPERVISORS**

We, the undersigned supervisors, have reviewed the dissertation submitted to us and have approved the work as having fulfilled the requirements for the Degree of Doctor of Philosophy in Business Administration (Ph.D.) of the University.

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**DEDICATION**

To my three daughters

Growing up in a world of rampant corrupt practices and manmade financial woes,  
may your education and your upbringing not be affected by nepotism, racism, and favoritism as  
you grow up in God's Graces.

And to Malawians

Restore the lost hardworking spirit and integrity for the continued development of  
the Warm Heart of Africa

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## **ACKNOWLEDGEMENTS**

I wish to profoundly thank firstly the Almighty God for seeing me through this far. Indeed who was I if it were not for His invaluable Graces which He has showered upon me through His begotten Son in the unity of the Holy Spirit. Indeed He who is Mighty has done Great Things to me and Holy is His Name.

Secondly my thanks go to Dr. Francis Mkandawire and Professor Tesfaye Ketsela for the invaluable guidance and assistance in the development of this research as my Supervisors and to all participants in my survey who took their time to respond to my questionnaire without which it could not have been possible to finalize this research.

Also the following individuals deserve special thanks for granting me audience to interviews them, and the role they played that helped the compilation and completion of the thesis. Mr. Dye Mawindo, and Mr. Arnold Chirwa, who are Director and Assistant Director respectively of ODPP, for providing me access to various procurement audit reports and country assessment reports. Mrs. Agrita Ndala in her capacity as Public Relations Officer for the Anti-Corruption Bureau for providing information relating to her office. Above all Dr. Andrew Mwaba, Resident Representative of the African Development Bank, for supporting my research work in various ways too numerous to enlist and all those who provides various logistical support.

Last but of course in no way least, special thanks to my dearest wife Emmie and my three daughters Flora, Annie and Esther for enduring a large part of time without my presence when I was busy compiling this dissertation.

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**LIST OF ACRONYMS AND ABBREVIATION**

PPA	Public Procurement Act
AfDB	African Development Bank
ODPP	Office of Director of Public Procurement
MDB	Multilateral Development Bank
TI	Transparency International
CPI	Corruption Perception Index
ACB	Anti-Corruption Bureau
PE	Procuring Entity
NGO	Non-Governmental Organization
EU	European Union
EEC	European Economic Commission
EC	European Commission
EEA	European Economic Area
UNICITRAL	United Nations Commission on International Trade Law
WTO	World Trade Organization
GDP	Gross Domestic Product
OECD	Organization of Economic Cooperation and Development
DAC	Development Assistance Cooperation
GPA	Government Procurement Agreement
UNCAC	United Nations Convention Against Corruption
MAPS	Methodology for Assessment of Procurement System
PPP	Public Private Partnership
USAID	United States Agency for International Development
BEEPS	Business Environment and Enterprise Performance Survey
ECA	Economic Commission for Africa

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GNP	Gross National Product
LAC	Latin America and the Caribbean
WVS	World Values Survey
RFQ	Request for Quotation
CPAR	Country Procurement Assessment
MDA	Ministry, Departments and Agencies
UNCTAD	United Nations Conference on Trade and Development
PFEM	Public Finance and Economic Management
VfM	Value for Money

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**ABSTRACT**

Against a background of studies indicating that procurement processes are vulnerable to corruption, collusion, and fraud and manipulation, Public Procurement has been identified as the government activity most vulnerable to corruption. A well-functioning Government procurement system requires holistic approach. It should comprise a legislative framework, supported by regulations necessary, and by institutional, administrative and legal infrastructure. In other words procurement rules and procedures alone are insufficient and effective implementation and operational efficacy are vital. This means that the objective of avoiding corruption through the promotion of integrity in the system has to be balanced with ensuring the efficient use of public resources. Thus achieving value for money in procurement which is sometimes referred to as 'allocative efficiency'. However when undertaking value for money objectives in procurement, corruption tends to find its way in, consequently the principle of allocative efficiency is hardly achieved. This research has studied how these twin aims are balanced and integrated into a well-functioning Public Procurement system.

In terms of methodology the research followed a mixed approach where both a quantitative survey using a questionnaire and qualitative data collection through structured, in-depth interviews, participatory approach and an exhaustive document review. Purposive sampling technique was using to get the population sample to be interviewed. Data from both quantitative and qualitative methods was analyzed using excel spreadsheet and conclusion were deduced in both tabular and statistical formats.

The findings from the research show that there is corruption in public procurement in the following areas:

- a) Supplier/Contractor induced corruption in public procurement as a result of stringent competition for government contracts where suppliers bribe their way to influence tendering decisions;
- b) Public official induced corruption through creation of bureaucratic hurdles that necessitate seeking faster services through paying bribes by the suppliers/contractor.
- c) Public official induced corruption mainly due to lack of values and adherence to ethical practices and in some instances due to low salaries of civil servants; and
- d) Politically induced corruption where contractors with political connections receive favors for the fear of political persecutions.
- e) Lack of institutional, and individual capacity as to effectively comply with the legal and regulatory framework.

Based on the above findings this researcher recommends that in order to fight corruption in public procurement in Malawi the following need to be in place:

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1. An effective public procurement systems supported by capacity development programs both at institutional and individual level is a requirement.
2. Capacity development strategies must be drawn to address gaps in legislative and regulatory framework, institutional framework and management capacity, procurement operations and market practices and above all integrity and transparency of the procurement system.
3. Political will to root out political interference in procurement which was found to be the major intervening variable.

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## CHAPTER ONE

### INTRODUCTION

#### 1.0 Introduction

The Malawi Government enacted the Public Procurement (PPA) Act in 2003 to provide the principles and procedures to be applied in regulating the public procurement of works, goods and services; and to provide for the establishment of the Office of the Director of Public Procurement (ODPP) as the main authority responsible for the monitoring and oversight of public procurement activities; and also for the development of the related regulatory and legal framework and professional capacity development of the public procurement. (PPA Act, 2003; Africa Development Bank Country Strategy Paper, 2013-2017)

According to ODPP Strategic Plan, 2006-2011, the vision of the Government in as far as public procurement is concerned is to achieve a better and corrupt-free public procurement system that in turn assures a better life for the majority of Malawians. This would be achieved because more resources which are perennially lost through corrupt practices in public procurement will be channeled to areas that go a long way to improving social and economic wellbeing of the people in the areas of better health care, quality education and above all better governance. In pursuit of this dream, the Government has among other initiatives, embarked on a procurement reform programme. It is adapting rules to conform to international public procurement best practice, and has put in place adequate legislation and procedures.

Corruption is a global menace that affects corporate credibility and economic sustainability as well as personal security. There is a rising admission that corruption is prevalent within the construction industry and the procurement process in particular. There is ample evidence across the world that corruption hinders economic development; reduces social services; diverts investment in infrastructure and social services and impacts the poor disproportionately (Khramkin, 2007). Several studies have exposed considerable inefficiencies in the procurement process and concludes that value for money is not achieved in the procurement of public infrastructure as a result of corruption (Lengwiler and Wolfsteller, 2006; Mawenya, 2008; Shakantu, 2003). The UN Convention against Corruption (UNCAC) makes provision for procurement as part of its 'preventive measures' program. Its text includes an article setting mandatory minimum standards for procurement requiring systems to be based on transparency; competition; and objective criteria in decision making and effective *inter alia* in preventing corruption.

According to Vee and Skimore (2003), there is evidence of corruption at all levels in procurement. These include proprietary information infringements and 'stealing of drawings during the design stage; collusive bidding during the tendering stage; cash inducements (bribery)

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for over valuing work performed during the site operation stage; negligence in the form of poor quality documentations and fraudulent conduct, such as covering up poor workmanship during site operations. Chiocha (2009) reported that the construction industry is consistently ranked as one of the most corrupt; the payment of large amount of money for the purposes of gaining or altering contracts and circumventing regulations.

A survey by Multilateral Development Banks (MDBs, 2002), indicated that procurement accounted for over 18 per cent of the World's Gross Domestic Product (GDP) representing US\$5.8million (Auril, 2005). However it is estimated that US\$400billion changes hands through corruption in public sector procurement. Reports indicate that corruption in sub-Saharan Africa is estimated around 70 percent of public procurement contracts. This inflates contract cost by about 20-30 per cent (Mawenya, 2008). A World Bank survey, reports that cost of corruption is estimated at about US\$148billion per annum in Africa (World Bank, 2003).

Against this background, Malawi is perceived as one of the most corrupt countries in the World, if the Transparency International's (TI) survey report of 2014, is anything to go by. In the TI Corruption perception index (CPI), Malawi ranked 100, 88, 91, and 110, respectively in the consecutive years of 2011, 2012, 2013, and 2014. This suggests that Malawi is not making any serious strides in the fight against corruption despite having the Anti-Corruption law enacted in 1995, and as revised in 2004. This points to the fact that any positive development towards the reduction in corrupt practices in the public procurement process, would have direct and significant impact on the overall economic situation of the country, and consequently lead to savings on the already over-stretched public purse (Mawenya, 2008). This gives credence to the growing interest in studies related to corruption and its associated practices in public procurement and makes this area relevant for further exploration.

Public Procurement corruption can be classified to include: supplier induced corruption as a result of stringent competition for government contracts; public official induced corruption through creating bureaucratic hurdles that would necessitate seeking faster services; it may also be politically induced corruption where contractors with political connections receive favors for fear of political perception. (Bashemuka and Tumutegereize, 2009)

The aim of this research therefore was to investigate corruption in public procurement which include those induced by both suppliers and buyers. The researcher went further to investigate corruption in public procurement that are politically induced in as far as it relates to procurement policy development and implementation in Malawi. The study is relevant because it will improve transparency in the procurement process and also have positive impact on project delivery.

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### **1.1 Problem Statement**

Although it is widely known that 70 percent of the total capital and recurrent budget of the Government of Malawi, currently at MK902billion (2015/16 National Budget) is expended on procurement of goods, works and services, evidence on the ground seem to suggest a different picture. There are, seemingly, gross inefficiencies in public procurement such that corrupt tendencies seem to find their way in the procurement system, if the recent revelations of the plunder of public resources known as “Cash-gate” is anything to go by. “Cash-gate” is a scheme where unscrupulous civil servants in Malawi connived with politicians and business people to defraud government by making payments for goods not supplied, works not done and services not rendered. Results of a forensic audit carried out by Baker Tilly, a British Audit firm, established that MK7, 574,906,046 was lost through payments with no supporting procurement documents (MWK3, 955,366,067) and perceived inflated procurement prices (MK3, 619,539,979) between 1<sup>st</sup> April to 30<sup>th</sup> April 2013 due to mis-procurement practices representing 55 percent of the total MK 13,671,396,751 amount declared by the Auditors as total sum lost through cash gate in the reporting period. (Baker Tilly, 2013). This figure represents two percent of the 2012/2013 budget which was mis-appropriated within 6 Months (April, 2013-Sept 2013). Further it is alleged that the plunder of public resources might have started way back in period 2007, barely 4 years after the enactment of the public procurement Act in 2003. Thus media reports are awash with allegations that between 2007 and 2009, the country might have lost close to MK92 billion in procurement related malpractices. This perennial hemorrhage of resources has made the country lag behind in infrastructure development which has in turn led to poverty reduction strategies being a nightmare, despite the country clocking 51 years of independence.

### **1.2 Research Proposition/Hypothesis**

The hypothesis of this research therefore was that corruption cases in public procurement are due to:-

- a) lack of capacity in the procurement delivery system, at both institutional and at individual level;
- b) lack of knowledge of the country’s public procurement policy especially in the areas of legislative framework; and institutional framework ;
- c) non-compliance with the country’s public procurement policy especially in the areas of legislative framework; and institutional framework; and
- d) Inadequate managerial capacity in procurement operations and market practices including integrity and transparency of the procurement system.

### **1.3 Research Objectives**

The purpose of this study therefore was to:

- critically analyze the impact of current procurement policy on the Malawi’s anti-corruption agenda,
- explore how and why the corruption battle seems not to be won despite government policy and strategic focus.

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- explore how sound procurement policy could be essential for not only Malawi's fight against corruption but its economic stability as well.

#### **1.4 Research Questions**

In pursuit of solutions to the foregoing paradoxes, the research considered the following questions:

- a) What are the influencing factors that directly or indirectly encourage corruption in the public procurement in the Malawian context?
- b) Do all procuring entities understand, adhere to or use the provisions of the procurement legislative and regulatory framework that is in place?
- c) Do lack of institutional framework and management capacity render public procurement systems vulnerable to corrupt practices?
- d) How does lack of professional capacity in procurement operations and market practices contribute to corruption issues?
- e) Is the public procurement system transparent enough to promote integrity of those managing it?
- f) Is there any political interference in public procurement management that exacerbates corruption?

#### **1.5 Significance of the study**

The intention of this research was to contribute to the existing body of knowledge about state public procurement policy and its development, whilst emphasizing inputs and transformational processes operating in the implementation of the Malawi's public procurement policy framework that help to curb inherent corrupt practices. This research also aimed to identify findings that may well be used for legislative review advocacy in the current public procurement law and policy framework review.

#### **1.6 Scope of the Study**

This research sought the opinion of stakeholders to assess capacity in public procurement and the extent of corruption being caused by lack of the same. The stakeholders in question included but not limited to the Office of the Director of Public Procurement, Anti-Corruption Bureau, Public Procuring Entities, some Non-Governmental Organizations and Development Partners. The researcher also conducted interviews with suppliers and contractors in order to understand the supplier induced corruption. However before making contacts with these stakeholders, principles of procurement and corruption as presented in the literature were reviewed to support the subject under discussion.

#### **1.7 Assumptions and limitations**

This research made the following assumptions:-

- i) Politicians are culprits of corruption in public procurement through their influence
- ii) Having proper regulations is starting point towards addressing corrupt practices in public procurement
- iii) Capacity development for procurement practitioners can prevent corruption in procurement

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- iv) Continuous monitoring and enforcement of procurement processes and issues of compliance to regulations can assist in curbing corruption because some members of the general public may not know the impact of their actions.
- v) Dealing with supply side of procurement can have positive results since it takes two to tangle.

- ***Limitations***

The most important limitations this study faced were as follows:

- a) Some Controlling Officers were not willing to release Government information because it was regarded as confidential;
- b) The research being limited to Government offices in Lilongwe and some selected District Councils may not include all public entities in certain locations, which means any conclusion made applied to the areas chosen for the sample.

### **1.8 Structure of the Thesis**

This Thesis has been organized to provide a systematic flow of information that complements each other from the first to the last chapters. In addition to the introduction, the first chapter also presents the problem statement, research proposition, research objectives and research questions, significance of the study, scope of the study, assumptions made and overall limitations of the study. This research was obviously touching on the subject that has been investigated before; as such chapter two presents the literature review to highlight what other researchers have discovered before. The literature review also presents the conceptual and theoretical frameworks which discuss the relationship between variables and the research model of the study. In chapter three the methodology of the research has been presented in form of the research design, research strategy the sampling frame and data collection methodology: Chapter four presents findings and data analysis results in two categories namely: quantitative data as deduced from questionnaires and qualitative data obtained from interviews and desk studies of documents. Chapter five has the conclusion, acceptance of the proposition, recommendations, area of further research and a summary thereof. At the end of the dissertation is the bibliography and annexes.

## CHAPTER TWO

### LITERATURE REVIEW

#### 2.0 Introduction

A literature review is the process of exploring the existing literature to ascertain what has been written or otherwise published on a research topic (Collins & Hussey, 2003). In order to carry out a literature review, one would initially need to search for the relevant literature, the aim of which is to identify as many items of relevant secondary data as possible, such as books, journals, articles, conference papers, reports, archives and published statistics (Collins & Hussey, 2003). Hart (1998) defines the literature review as the selection of available documents, both published and unpublished on the topic, in this case public procurement policy, which contains information, ideas, data and evidence written from a particular stand point to fulfill certain aims or express certain views on the nature of the topic and how it is to be investigated and then the effective evaluation of these documents in relation to the research proposed.

This chapter is divided into four parts: Part One presents the procurement frame of reference while Part Two discusses the subject of corruption also as presented in the literature. Part Three presents an overview of possible areas where procurement interfaces corruption. Part Four presents the theoretical and conceptual framework that has described relationship between and among variables.

#### **PART ONE: - Frame of Reference on Procurement**

The structure of the literature review under Part One: -“Frame of Reference on Procurement”, starts by defining the term procurement including describing it from the systems thinking point of view. It then explores the literature by identifying the key differences between public and private procurement. The chapter then looks into public procurement as a policy tool. The chapter next explores the literature on various public procurement adopted in across different public sector context internationally. This further leads to identifying policies in the literally sources and applying them to the Malawian context as prescribed in the Public Procurement Act 2003. This literature review aims to identify areas of debate and consensus and identifies gaps in knowledge within that context thereby establishing how corruption finds its way in the public procurement delivery system. The public sector procurement represents about 40-45 percent of the world’s economies. In some African countries it can be as much as 80 percent as Knight et al (2007) point out: *“imagine how much might be saved and reinvested in public procurement service provision if the spending bill was reduced by just one percent in any nation.”*

Knight et al (2007) go on to mentions that it was astonishing that so little research has been carried out on public procurement across different nations even within nations to improve

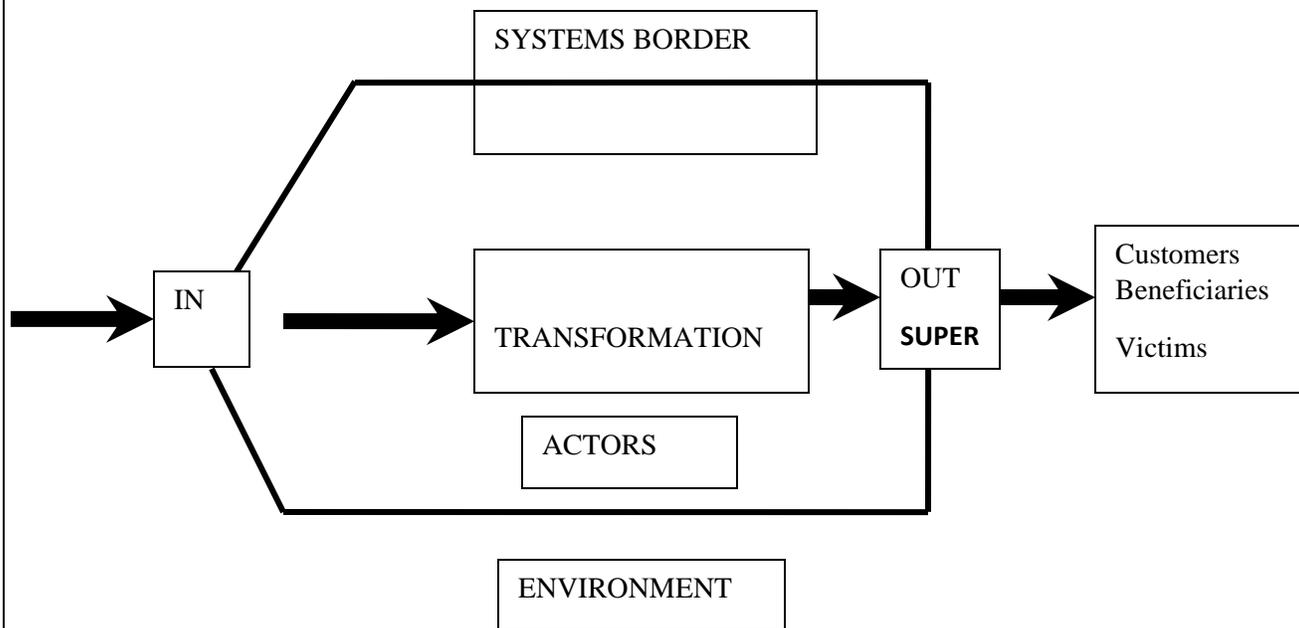
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procurement when it is such a vital and significant part of all national economies. Mathews (2005) also states that a search of transparency literature shows little evidence of public procurement penetrating theories boundaries of public management and strategic management. The elevation of procurement to one of national strategic priorities has been the focus of considerable attention during the 1990s, states Murray (2007). However most of the initial literature was set primarily within the private sector, and predominantly focused on the manufacturing industry with comparatively little attention given to public sector procurement strategy and management. It has only been in the last decade that public procurement has been recognized as different from that of the private sector and has consequently developed into a research discipline in itself (Murray, 2007). Walker (2007) also mentions that public procurement is significant but was as yet an under researched phenomenon. ‘Despite the scale and complexity of government purchases, the field of public procurement has remained a relatively under-researched area amongst economists, lawyers and other social scientists’ (Arrowsmith & Hartley 2002, p34)

**2.1 Using Systems thinking to describe the procurement system.**

The procurement system development had its basis in general systems and its technology is mainly based on the seminal work of Checkland (1993) but also to some extent that of Senge (1993) and Churchman (1968). What then is the system? What does it consist of and how do you recognize a system? Checkland (1993) argues that a root definition consists of six elements as indicated in figure 2.1

To start with there must be a transformation process which transforms “defined inputs to defined outputs. Someone must also own the system; there have to be actors, individuals, entities that perform the actions required to conduct the transformation process. The system also has to have customers either in the system or outside the system that gain or suffer something from transformation process. Surrounding the system is the environment, which sets the constraints for the system. The environment can be a system superior to the system studied. In the environment we may find strong elements that affect the system studied while the system studied cannot affect the element. Finally, for the system to qualify as a system it should, according to Checkland, use the six above mentioned elements. They will provide enough information about the system.



**Figure 2.1 Root definitions of a system adapted from Checkland (1993), as cited in Knudsen (2003) p27**

Further, Checkland advocates that in order to give the richest possible picture of the situation the system should be depicted in terms of a slow-to-change structure and continuously changing process. “The relationship between structure and process, the ‘climate’ of situation has frequently been found to be a core characteristics of situations in which problems are perceived”. (Checkland, 1993 p166).

The systems structure may be expressed in terms of physical layout patterns of communication, reporting structures or control of flows, general issues that do not change very often. Process describes the system’s basic tasks and activities such as making decisions to do something, doing it, monitoring the results and taking the corrective actions. Using a combination of structure and process is not uncommon according to Arbnor and Bjerke (1994, p134-145). The systems structure largely sets the conditions and limitations for what can be achieved regarding performance of the processes in the system (Mattson, 2002, p201).

## **2.2 The procurement system in terms of process and structure.**

The procurement system identified by Knudsen, 2007 comprises the procurement function and its two closest units, the suppliers and internal customers. In between the procurement function and the suppliers are relationships with different characteristics, and likewise there are relationships with the internal customers as well. The procurement system is depicted in table 2.1 below.

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	Supplier	Relationship	Procurement function	Relationship	Internal Customer
<b>Process</b>	Volume # of items product quality service quality	# of deliveries # of orders Information transfer.	# of new contracts. # of renewed contracts # of call offs	# of deliveries # of orders Information transfer	<b>Actual needs Experiences Opinion</b>
<b>Structure</b>	# of suppliers # of potential suppliers localized.	Type of distribution channel Complexity Duration of relationship Uncertainty Modes of communication.	Internal routines and procedure. Organizational configuration.	Type of distribution channel Complexity Duration of relationship Uncertainty Modes of communication.	# of <b>customers</b> Type of <b>business</b> basic needs

**Table 2.1. The procurement system described in terms of process and structure, (Knudsen, 1999 as cited in Knudsen, 2003 page 80)**

### **2.3 Public Procurement Policy**

Many definitions have been used to define ‘policy’. The word originates from the Latin word ‘politics’, meaning to look after, hence the word police was also derived from the same Latin word. The word ‘policy’ is not a tightly defined concept but a highly flexible one, used in different ways on different occasions. Dye (1997) states that public policy is whatever governments decide to do or not to do. Cochrone and Malone (1995) carry this further stating that public policy consists of political decisions for implementing programs to achieve social goals.

On the other hand “procurement is defined as the activity of assessing buying and receiving goods, works and services. It is public whenever this process performed by public organizations or whenever it is performed on their behalf or again funded by public organization.” (Adoteri, 2004, p353 as cited in El-Gayed, 2013).

The United Nations (UN) views public procurement as the overall process of acquiring goods, civil works and services which includes all functions from the identification of a need selection of potential sources, contract award and its administration to the end of services or life of asset (Thai, 2009). A distinction must, at this stage, be made between government spending and what is typically referred to as state spending on goods and services as the former includes spending on wages salaries and pensions.

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In this research, the terms may be used interchangeably, however, they only cover spending, purchasing, procurement and buying of goods and services (Dawar & Evenette, 2011). The buying of goods such as weapons and grain by states has been practiced throughout the ages. Callender (2004) states that procurement practice can be traced back over 2,800 years. Written on a clay tablet found in Syria the earliest procurement order dates from between 2,400BC and 2,800BC, mentions Thai (2001). The area of government procurement is very dynamic and a number of issues such as economics, law and public policy combine in formulating complexities both for the public and private sectors. Sementelli (2010) mentions that public procurement tends to rely heavily on the professions of law, economics and operations management, particularly at the micro level.

Public procurement is a route to sales for the private sector to some of the biggest client in the world, and has an impact on domestic economies and international trade clear procurement policies and transparent and efficient actions can foster and strengthens markets so, from this point of view, public procurement is clearly a major economic driver and can be used to influence critical economic conditions. Public procurement is complex in nature; Callender and Mathews (2004) have noted that public procurement and supply chain consist of various bodies of knowledge and Thai (2009) has illustrated these, as outlined in the table below:

<b>Discipline related to procurement</b>	<b>Presentation examples</b>
Information science	E-commerce, inventory management
Accounting and finance	Costing, financial modeling whole life costing
Economics and law	Evaluation of procurement policies and contracts management
Sociology and marketing	Organization and markets management, B2B relations
Organizational behavior and psychology	Change management, supplier performance management

**Table 2.2: Disciplines related to procurement (Thai, 2009 as cited by Callender and Mathews, 2003, page 2)**

Public procurement has always evolved and this evolution increased during the 1990s, as governments at all levels pressured into doing more for less, with governments such as the United Kingdom spending over 24 billion Pounds Sterling a year on goods and services (Brooks, 2012). Mathews (2005) notes that the importance and potential, impact of public procurement is obvious, because procurement professionals can control the destination of such a significant amount of government money. Since the 1980s and 1990s governments have been strong to do more with less (Mathews, 2005) so, while governments all over the world face constraints on spending the public demand, for increased transparency and efficiency has identified and both social and economic pressures on the domestic and international fronts have required government all over the world to seek better performance from their public sectors (Thai, 2009). The increased scrutiny procurement is receiving warrants a mention by Coggburn (2003) where all public agencies, regardless of size, require the purchase of goods and services. If the

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procurement function fails to deliver quality goods and services in a timely fashion and at a value for money price, the performance of government suffer (Coggburn, 2003).

#### **2.4 Public Procurement versus Private Procurement**

Johnson et al., 2003 points out that the function of supply in the private or public sector is to manage the delivery of goods and services through supply chain in a cost effective manner. The public sector represents about 40-50 percent of many world's economies spending on providing services and procuring from private sector. According to Walker (2007) countries such as Singapore spend approximately 18 percent of its economy, whilst other developing countries spend up to 80 percent public procurement is a significant but yet an under-researched phenomenon and it still lags far behind private sector procurement in terms of scientific analysis.

Knight et.al, 2007 as cited by EL-Gayed, 2013 observes that although not dissimilar in terms of principle as both public and private sector procurement systems have to acquire goods or services, they are in fact very different. Thai (2009) suggests that the core difference between public and private sector procurement is the relationship between both parties. Walker (2009) suggests that the nature and context of public sector purchasing differs from commercial practice because, as well as both being concerned with reducing costs and achieving value, public sector buyers have the additional task of achieving social environmental and other benefits in their purchasing to fulfill the responsibilities of government to society. When comparing public and private sector procurement, it appears that the demands on public procurement are greater and more variegated than those on the private sector. For example Knight et al.,(2007) further points out that the Dutch government procurement organization (PIA), estimates that 80 percent of public procurement is more or less similar to private sector procurement, leaving 20 percent which is very different because of the various demands upon it.

As governments respond to demands to become more efficient, public procurement practitioners are now expected to focus primarily on the strategy aspects of public procurement and less on routine transactions (Mathews, 2005). Knight et al. (2007) have grouped the various demands that differentiate public and private procurement as follows:

- External demands;
- Internal demands;
- Demands originating from context;
- Demands on process; and
- Multiple roles for the public organization itself.

They further mention that external demands are those of transparency, integrity accountability and exemplary behavior because a government is expected to set an example, not only in terms of ethical standards, but also in terms of efficiency and effectiveness of their own operations. Public procurement is often in the media for these particular reasons.

Fraud and corruption are a dominant feature in many countries' public domain. Those countries who have overcome procurement hurdles by introducing various reforms to their procurement systems still often find themselves in the media binoculars for projects being late, over budget, or

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not delivering to a specified standard. Attracting the attention of the Fourth Estate clearly sets out the importance of public sector procurement in the eyes of the public and is therefore on many a political agenda globally (Knight et al., 2007). Thai (2009) mentions that public procurement has become much more complex than ever before. Thereby requiring asking public procurement practitioners to deal with a broad range of issues such as;

- Balancing the dynamic tension between (a) competing socioeconomic objectives (b) national economic interest, and (c) competition as required by regional and international trade requirements;
- Satisfying the requirements of fairness, equity and transparency;
- Utilizing new technology to enhance procurement efficiency, including e-procurement and purchase cards.

Whereas to a large degree, private organizations are permitted to invoke whatever criteria they like and may also use whatever control procedures they see fit to govern the outflow of money to suppliers, the public sector operates under the constraints of having to behave rationally and fairly, as good custodians of public money (Thomas, 1999) as cited by New et al., 2002, Tarpin, 1989 as cited by New et al., 2002). Knight et al, (2007) mentions that, as in the external demands that face public procurement, internal demands in a public organization also differ from those of the private procurement organization. Public organization have different goals at the material time of procurement some of which may be in conflict. For example, demand for a good sewage systems versus road works. Public organizations, also have political goals. Thus an official may have been elected on a platform of those particular goals. Clearly stakeholders in public procurement are many: citizens, the electorate, elected officials, management, and procurement officials all of which have different objectives and agenda. Whilst public procurement buys goods or services for themselves, they are also buying for the citizen that they are expected to serve. The suppliers in their case are also citizens, tax payers and the electorate. Public procurement is budget driven, that is, the budget determines what can and cannot be procured.

Such budgets are open and the public, from which suppliers are sourced have access to departmental budgets, thus changing supplier-buyer relationships drastically from private procurement. The demands on the process of public procurement fit very tightly within strict limits that are imposed by legal procedures and legislation, for example EU Rules or local political choices. However, the same sector itself is also to a large extent, the policy makers in this case and determines the rules and regulations in which it has to operate. Given these differences it seems justified to state that public sector procurement is more complex than private sector procurement (Knight et al., 2007). Constantino et al (2012) too states that although government and private procurement share the same purpose of sourcing suppliers at the cheapest price and at an acceptable quality several differences can be found between the two, one of which being that, government administers money that belong to all.

Procurement may have more of a strategic character in the private sector than in the public sector argues Snider (2006), and it is the difference in the tactical and strategic role of procurement that

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is attributable to the difference between public and private procurement. Mathews (2005) mentions that public procurement practitioners are told by their private sector peers to be more proactive to add value, however practitioners are required first to add value, however, tradition has decreed that public sector practitioners are required first and foremost to satisfy the complex accountability process of the government. Murray (2007), further states that at the procurement policy level there is clearly a fundamental and accepted difference between private and public procurement due to public procurement sitting within legislative administrative and individual frameworks set by politicians.

Public and private procurement more or less share many objectives, such as achieving value for money and guaranteeing an efficient procurement process. Up until recently, it was assumed that only public procurement included social and environmental objectives but this is not necessarily the case with the popularization of Corporate Social Responsibility, the private sector has become increasingly 'focused' on promoting social and environmental objectives (Arrowsmith 2010).

Public procurement objectives not only differ from private procurement but also within itself there are different public procurement systems and therefore different procurement objectives. The significance and existence of different objectives depends on the nature of the system itself; how these objectives relate to one another, the impact each has on the other, and the priority of each, play an important part in identifying the system approach to procurement (Arrowsmith, 2010). Arrowsmith (2010) identifies eight objective that are usually shared by public procurement systems, as mentioned the significance of each objective differs accordingly to the system. The objectives of public procurement systems as identified by Arrowsmith (2010) are:

- Value for money (efficiency) in the acquisition of required goods, works or services.
- Integrity- avoiding corruption and conflicts of interest
- Efficient implementation of industrial social and environment objectives (“horizontal policies”) in procurement.
- Opening up public markets to international trade
- Efficiency in the procurement process
- Equal opportunities and equal treatment for providers
- Fair treatment of providers; and
- Accountability

The design, application and interpretation of legal and regulatory rules directly impacts the implementation of each objective. Knowing the characteristics of the system, as mentioned above and exercising the discretion that exists within the rules is crucial in order to reduce the occurrence of problems that may occur and the impact of such problems. The manner in which problems are addressed also can differ. This can be due to the culture of the organization or the society in which the system occurs, if levels of corruption are relatively high, or if an environmental issue is culturally favored this with impact the vigorous with which each problem is tackled. This same theory is applied to how systems address objective when significant and

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priorities are similar. Society and the culture of the organization dictate how these objective can be reached and therefore they cannot be universal (Arrowsmith, 2010).

The differences between public procurement systems and the private sectors', also have an impact on the procurement approach. In certain cases, the efficiency of the procurement may be compromised in order to adhere to rigid rules, which help achieve the systems priority objective, for example, accountability. By altering the approach to allow for the prioritized objective the active procurement cycle is altered and what may be seen as inefficient and loss of value to one system may actually be prominent in achieving the prioritized objectives in another (Arrowsmith, 2010).

## **2.5 Procurement as a Policy Tool**

The use of procurement as an instrument of policy is however not without controversy and questions have been raised regarding its legitimacy and effectiveness, and also the negative impacts on primary procurement objectives. All too often, the benefits effects of policies that are promised through procurement are doubtful or minimal. Even where benefits can be achieved, they must be weighed against the cost of doing so through procurement either in terms of a price premium or a compromise on other matters such as time or quality. Enforcement costs and the erosion of core procurement values must also be considered.

The management of public bodies is a complex activity that entails the balancing of different and sometimes somewhat contradictory objectives (Kamodie, 1997). The relationship between public procurement and good governance is a subject of increasing attention (Knight et al..., 2007), Effective procurement, as mentioned by Collander (2007), provides governments with a means of bringing about social environmental and economic returns. Inversely malpractices within public procurement demonstrates a failure of governance. Although some countries still develop their procurement policies to address only the relatively narrow agenda of value or process efficiency a broad and a more strategic policy has been adopted by states that have recognized that the procurement function can develop more effectively the elements of procurement within wider government policies (Thai, 2009)

Arrowsmith (2004) mentions that traditionally governments use their extensive power to use procurement as an instrument to achieve a variety of objectives. Some objectives which need to be constantly weighed are the trade –offs in conflicting procurement objectives; these could be trade-offs between quality and cost, timeliness and cost and risk and cost. It is not new that policy makers (i.e. governments) have increasingly used public procurement as a political tool to achieve social-economic goals. Procurement as a support for broader government policy varies obviously to what that policy is but procurement policy contribute immediately to job creation and employment strengthening in a particular industry, regional involvement, diversity, development aid and sustainability, and these have been described by Thai (2001) as 'non-procurement goals'.

There are numerous examples of how socio-economic policies have been supported by procurement. Watermeyor (2008) highlights that the United States of America (USA) in order to ensure a market share for small and minority businesses uses reservation and supply side

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schemes. These schemes the United States (US) Government uses Federal purchases as national economic factors, by providing incentives to suppliers who buy American or produce their goods or services in the State for the Government. This allows for a boost of the supply chain in the state as possible procurement is a potential tool and the origin of all procurement policy is political. In Botswana, a legislation addition in 2011 allowed schemes to promote Botswana-owned companies; in South Africa, successful Tenderers with certain criteria, must participate in the South African economy,

Procurement as a social policy has been seen where government seek to meet certain needs of interest groups, such as ethnic minorities, small vendors and local vendors. Advocacy groups on issues, such as the environment for example, also look to government to gain preferential treatment for business that uphold their ideologies. However with that aid, Thai (2009) mentions that major deficiencies are experienced by governments that provide preferable treatment to particular interest groups and that sometimes the government may seem unfair in its procurement and lose credibility. However, procurement as an economic policy compensates for the unfairness perceived in the private sector which tends to be dominated by large organizations and global suppliers.

As alluded to earlier this is evident in the USA where Federal purchases are the most important national economic factors, by providing incentives to suppliers who buy American or produce their goods or services in the State for the Government. This allows for a boost of the supply chain in the state as possible procurement is a potential tool and the origin of all procurement policy is political (Thai, 2009). Murray (2007) highlights why political procurement is important; he explains that the public sector works within a narrow framework of democratic governance strategy and management, where local people exercise their right to determine how and by whom they should be governed through the ballot box. He continues further to explain that in turn, those who are elected not only have a representative advocacy role but are democratically accountable to their electorate for their decision. Aspirations to de-politicize public procurement faces several huddles, decisions on appropriation can involve financial hardships and job losses (Schapper, et al., 2006).

In a democratic system of government there is a distinctive division of powers between the legislative, executive and the judicial branches of the state; however the procurement authority and responsibilities vary among countries (Thai, 2001). In countries such as the United Kingdom (UK) policy implementation is carried out by the executive branch of government, i.e. Cabinet through non-legislative means in form of executive order. In the US, the legislative branch of government primarily influences the public procurement system through legal means i.e. laws (Thai, 2009). Along with transparency, the key and broadly accepted principle underlying a modern public procurement system is open and unrestricted competition, universal access to the procurement market (Sigma, 2009). The policy context concerning public procurement in the UK, is based on a set of guiding principles of transparency, competitiveness, accountability, efficiency, legality, and integrity that have the ultimate aim of supporting the delivery of best value for money in public procurement (Her Majesty's Treasury as cited by Walker 2007).

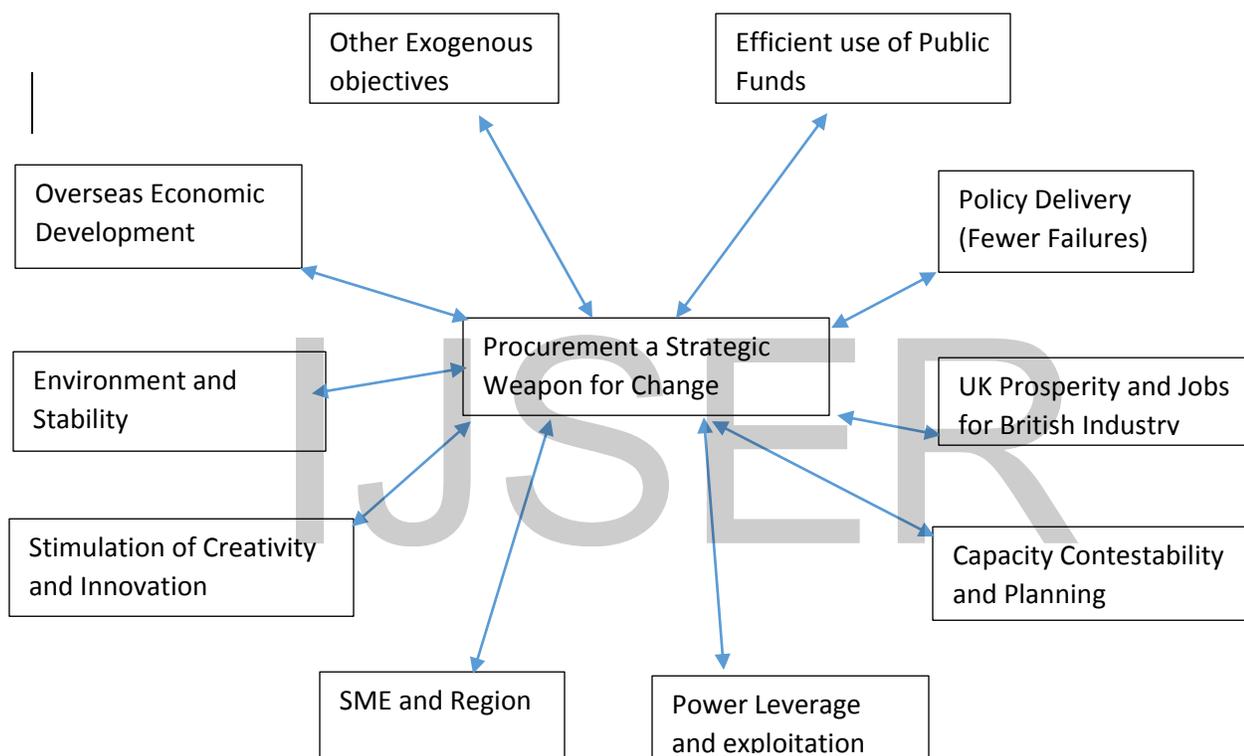
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In the European Union (EU), Public Procurement is governed by a similar set of policy frameworks as described for the UK. However, in addition to the underlying principles of transparency, accountability etc., and the EU public procurement policy framework is designed for competition in European markets by promoting the free movement of goods and services across its borders. In the USA, the public procurement policy framework includes an emphasis on avoiding discrimination and providing equal opportunities. Where these issues are most crystalized is in the development of Federal policies that promote procurement from women and minority owned businesses, with some emphasis on purchasing from indigenous peoples (Walker, 2007). For almost two decades the US government has been providing equal opportunity programs for minority businesses competing for US government contracts, the objectives of this are:

- To ensure non-discrimination in the award and administration of contracts
- To create a level playing field on which minority businesses can compare fairly for contracts
- To assist minority owned businesses in competing outside these government agencies
- To help remove barriers to minority businesses and
- To assist in the development of minority businesses so that they complete outside these programs. (Geter, 2006)

In Canada, policies emphasize similar aspects to those found in the EU, which include mandates for promoting competition and value for money; they also cover non-discrimination by ensuring procurement opportunities for businesses owned by indigenous people (Walker, 2007)

In South Africa, public procurement is seen as an important policy ever in the post-apartheid era, where the Black Economic Empowerment initiative prioritizes public procurement to buy from black-owned businesses in order to redress the economic advantages of white business attributed to apartheid. Prior to 1994, South African procurement system favored large and established businesses and it was very difficult for newly established business to compete in public sector procurement. In 1994, this changed when public procurement was granted constitutional status and was as a policy tool to address past discriminatory practices (Bolton, 2006). The South African Constitution now requires public procurement to be carried out in accordance with a system that is fair, equitable, transparent, competitive and cost-effective (Harpe, 2009). Public procurement frameworks in both developed and developing countries are characterized by a tension between public expectations of transparency and accountability and efficient and effective resources management (Schapper et al, 2006). In responding to the very broad question of what government expects of procurement, Martin Sykes, a UK Senior civil servant, addressed an all-party assembly of UK members of parliament, highlighting the wide range of issues that need to be considered by political leaders and the complexity of these issues (Knight et al, 2007). Figure 2.2 illustrates the themes in the objectives and impact of public procurement.



**Figure 2.2 Themes in the objectives and impact of public procurement (Knight et al, 2007, p343)**

Based on this, Knight et al (2007) suggests that public procurement policy may contribute to the following areas:

- Job creation and employment (e.g. by setting up purchases in a way that jobs are created)
- Small and medium-sized enterprises (SME/Regional involvement by splitting up purchases on smaller lots so that smaller companies can compete).

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- Diversity i.e. favoring groups of suppliers (minorities, women-owned, disabled, local firms).
- Stimulating, innovation (e.g. by asking for innovative products and processes).
- Sustainability and environment (e.g. by requiring or favoring sustainable and environmentally friendly products).
- Development aid using public procurement to support developing countries by favoring suppliers or products from those developing countries (Knight et al, 2007)

Small and Medium Enterprises (SMEs), play a vital economic role in many economies including industrialized nations. For instance out of the 4.3 million enterprise operating in the UK over 99 percent are SMEs. Not only do they also have significant social role, as they also account for 58 percent of employment in the UK (Walker & Preuss, 2008). Governments therefore cannot afford to ignore SMEs in their procurement policies.

Government procurement can have a powerful impact on domestic economies and a national and international trade, where clear procurement rules and transparent and efficient actions can foster and strengthen national and international markets (Garcia, 2009). Government procurement is a major economic driver, states Garcia (2009) and for this reason, it can be used to influence critical economic conditions such as those that emerged in 2008. In the same way as the EU implements accelerated procedures to nurture their economies via major public investments projects, other countries like in war torn countries such as in African, could in fact use public project and purchases to help kick start a depressed economy by ratification and simplification of its law as to accomplish this (Garcia, 2009).

Many public goods and services have a direct or indirect impact on economic performance and living standards. Effective national procurement policies can help improve the execution of state infrastructure projects, yielding export and growth benefits (Dawer & Evenett, 2011). In the EU the use of procurement to address social issues has been criticized, primarily due to the inability to quantify the value for money in procurement contracts, as well as fear of discrimination, against non- EU suppliers who are not able to adhere to these social clauses. An example mentioned by Erridge (2005) is that in 1999, Belgium incorporated a social clause that would restrict contractors; when employing unemployment service. A judgment from the European Court of Justice resulted in contracts being given to tenders more favorable to tackling unemployment. However this could only be done as a secondary criterion, as other parameters relating to quality and performance of tenders are almost tied in all other criteria. Erridge, (2005) has identified three sets of sometimes conflicting goals against which public procurement policy may be analyzed.

- **Regulatory Goals,**

The main focus is on compliance with the European Union Public Procurement Directives

- **Commercial Goals**

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Pursuit of commercial goals emphasizes the use of market mechanisms, such as competitive tendering, market testing, contracting out and the private finance initiative to achieve procurement goals such as reduced cost and increased quality.

- **Socio-economic goals**

Pursuit of socio-economic goals emphasizes the use of public procurement to support wider government policy and includes policy areas such as employment, social exclusion, protection of minorities, economic development, particularly in relation to small firms) and environmental policy. Conflicts clearly arise in the pursuit of the goals identified above as mentioned by Erridge (2005).

- Conflicts between regulatory and socio-economic goals; protagonists of a restrictive interpretation of the directive argue that allowing the use of public procurement for socio-economic purposes carries a greater risk of breach, worth severe financial penalties if found guilty.
- Conflicts between commercial and social-economic goals; those who argue that only commercial considerations should be taken into account state that the outcome of allowing socio economic criteria to be considered is likely to be extra or hidden costs (Erridge, 2005, p337).

Many jurisdictions worldwide implicitly or explicitly have similar management objectives for public procurement, and these policies are common (Schapper et al., 2006). Such policies mentions Schapper et al. (2006), are generally constructed from the elemental objectives of the following:

- Public confidence- underpinned by attributes of accountability, transparency, equity and fair dealing.
- Efficiency and effectiveness- the use of public finances to achieve value for money and efficiency of delivery.
- Policy compliance and consistency of public procurement in relation to other policy objectives.

Dawar & Evenett (2011) also mention objectives that are commonly targets of public procurement policy and these are:

- Value for Money
- Macroeconomic management
- National security
- Redistribution to the poor
- Industrial and regional development
- Promotion of SMEs
- Support for State-Owned Enterprises and their employees and
- Pursuit of governance related targets

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Tryahikayo (2009) lists circumstances when procurement can be used as a multi-sector policy instrument.

Multi-sector Policy Instrument	
1	Environment protection and related issues, i.e. issues associated with Green Procurement hazardous materials spills etc.
2	Employment opportunities and income creation in regeneration areas
3	Business opportunities and/or growth opportunities for SMEs
4	Education and training, as well as adult basic skills provision
5	Promotion of levels of health and safety, as well as local security and quality of life decisions
6	Innovation and technology transfer, e.g. in case of offsets
7	Attainment of gender equality and affirmative action (such as equal access to opportunities between men and women)
8	Fostering labor mobility or labor flow from one place to another
9	Improved working conditions and greater respect for human rights
10	Welfare standards of living, as well as family issues and social cohesion
11	Compliance with legal requirements
12	Poverty levels and community wellness
13	Empowerment and integration of persons with disabilities and the disadvantaged poor groups
14	Indigenization of the economy or promotion of companies owned and controlled by indigenous sons of the land

**Table 2.3: Multi-sector Policy Instrument (Turyahikayo, 2009, p6)**

As indicated in table 2.3, it is clear that public procurement can be used as a multi-sector policy instrument that has far-reaching implications for a very wide range of social economic development issues (Turyahikayo, (2009, as cited by EL- Gayed, 2013).

A procurement system must have clear policies, which may vary according to different economic, social and political environments. For example, a procurement system within government with an ailing economy, under-privileged groups, environmental degradation or corruption, may focus more on economic development or stabilization, procurement policy, sustainability or transparency, respectively (Hartley, 2006). In some countries, where the dominant political concern is principles of transparency, equity and fair dealing, public procurement is managed through an extensive regulatory framework, where the framework regulations micromanage the steps throughout the procurement process. This highly regulated procurement environment, according to Schapper et al. (2006), is designed to minimize discretion in circumstances to be considered as high risk from unwarranted influence. Thus the prescriptive approach is almost exclusively adopted in developing countries where officials have minimal procurement skills and also to minimize corruption. However, Mathews (2005) mentions that when government agencies are restricted to uniform and routine standards, it limits creativity and innovation. Schapper et al. (2006) also comments that there is indeed a penalty for highly prescriptive, inflexible frameworks, immediately generating tensions with performance and efficiency.

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An attempt to standardize procurement frameworks is the Model Law on Procurement of Goods, Construction and Services has been developed by the United Nations Commission on International Trade Law (UNCITRAL). As international trade rules and regulations entered into force and came to dominate the global arena, important milestones were reached: by the mid-1990s. The 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services and the 1994 World Trade Organization's (WTO) Agreement on Government Procurement (AGP) were both put into place (Garcia, 2009). Whilst global efforts towards opening up public procurement markets is not a new phenomenon, the Model Law has the dual purpose of assisting countries in the need from improved public procurement policies and assist them in removing obstacles to international trade (Sennoga, 2006). Although free trade may somewhat restrain government freedom to use procurement as a policy tool, there are numerous arguments that can be raised in favor of procurement as a policy tool that proves useful, effective and valuable for the implementation of social policies and one which should not be denied to governments without convincing justification. This is providing the use of procurement as a policy tool has measurable targets, the processes used are verifiable, auditable and transparent (Arrowsmith 1995, as cited by Bolton, 2006).

Public procurement is an indispensable economic activity for good governance, comments Kashap (2004). Governments, multilateral funding institutions and international aid organisations implement their development assistance aimed at fighting disease, reducing poverty and fostering economic and social development. In this process they generate business opportunities worth billions of dollars for trade and industry, as experienced in Libya during the 2011 conflict and post-conflict donor funding (Kashap, 2004).

Kashap (2004) continues to explain further that government resources, the majority of which are from taxes, must be allocated and used efficiently in the procurement process, although, in the case of some African countries like Nigeria, Angola, Libya, their vast majority of government resources are from the extractive industry revenues, i.e., oil and gas. Nonetheless, governments, which are creating a fine-tuned procurement process show good governance, one of the basic codes of conduct as identified by Kashap (2004). Good governance is reflected in the adequate use of the government's limited resources in providing the best value for money services and goods for the public.

Another basic code of conduct identified by Kashap (2004) is economy and efficiency. Procurement policy dictates that value for money is a priority in all agencies' procurement processes. Value for Money does not simply refer to price, as this is rarely exclusively a sign of value, but an efficient comparison of cost, benefits and options which can allow buyers to choose the best value for money in public goods and services.

The degree of transparency also helps determine the effectiveness of a public procurement system. Transparency in the context refers to the ability of all interested participants to know and understand the actual means and processes by which contracts are awarded and managed by the concerned procurement entity (Kashap, 2004). Transparency is a central characteristic of a sound and efficient public procurement system and characterized by:

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- Well-defined regulations and procedures open to public scrutiny
- Clear standardized tender documents
- Bidding and tender documents containing complete information and
- Equal opportunity for all in the bidding process

(Kashap, 2004, as cited in EL-Gayed, 2013)

The procurement policies of multilateral financing institutions, namely: World Bank, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, as well as the United Nations System of Organizations are more or less the same in essence. Many of the Bretton Woods organizations have rightly laid down conditions that borrowing nations have to follow. The World Bank, explains Kashap (2004), has five basic concerns that govern its procurement policies, namely:

- To ensure that the goods and services needed to carry out the project are procured with due attention to economy and efficiency
- To ensure that the loan is used to buy only those goods and services needed to carry out the project
- To give all qualified bidders an equal opportunity to compete for Bank-financed contracts
- To encourage development of local contractors and manufacturers in borrowing countries and
- To ensure that the procurement process is transparent.

(Kashap, 2004, p27)

The African Development Bank's policy is designed to encourage the development and participation of contractors and suppliers from regional member countries of the Bank. The European Bank for Reconstruction and Development public procurement policies are based on the fundamental principles of non-discrimination, fairness and transparency. The Asian Development Bank procurement policy is designed to ensure that loans should be used due consideration of economic and efficiency (Kashap, 2004).

## **2.6 The European Union Procurement Regime**

The EU is a complex organization that began with the creation of three European Communities, which were set up in Europe under separate Treaties after the Second World War. These Communities were set up with the aim of promoting economic cooperation, which was itself seen as a means to securing peace and prosperity in Europe after the devastation of the Second World War (Arrowsmith, 2010).

The aim of the European Community (EC) was to eliminate the favoritism and protectionism of European public buyers in reserving contracts for their national suppliers by opening up procurement for trade reasons amongst member states. Established in 1957 to promote economic cooperation and peace in Europe, the EC or the EEC (European Economic Community), as it was called before 1993, constituted one element of the broader EU. The EU currently comprises 28 member states namely, Belgium, France, Germany, Italy, Luxembourg, The Netherlands,

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Denmark, Ireland, the UK, Greece, Spain, Portugal, Austria, Finland, Sweden, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, Slovenia, and, most recently in 2007, Bulgaria and Romania (Thai, 2009). The latest entry being that of Croatia who became a 28<sup>th</sup> member of the EU on 1<sup>st</sup> July 2013. These provisions, however, also apply to European Economic Area (EEA) countries namely Norway, Iceland, and Liechtenstein. There are also further ongoing applications for membership by Macedonia and Turkey. All these states and the EEA represent a common procurement market of a very significant magnitude (Garcia, 2009).

The means the European Communities pursued to create prosperity and entrench peace in Europe was by creating a free market in the member states, by removing trade barriers to free economic competition, i.e. removing customs duties and by allowing workers from member states to work in other member states. In Europe, this means economic prosperity was also seen as a primary means for achieving peace: it was felt that a close trade economic dependence would reduce the risk of future hostilities (Arrowsmith, 2010).

The EC's objectives was to create a common free market by removing barriers to trade, labor and capital across its member states, its basic constitutional document was the EC treaty which placed obligations on member states to comply with legislation from the EC, such as procurement legislation. The administrative arm of the EU is known as the European Commission, which is responsible for enforcing legislation such as procurement legislation across the EU. Although the EU treaty in itself does not contain provisions specifically on public procurement it does, however cover relevant areas:

- The prohibition against discrimination on grounds of nationality (Article 12)
- The free movement of goods and the prohibition of quantitative restriction on imports and exports and measures having equivalent effects (Articles 28)
- The freedom of establishment (Article 43)
- The freedom to provide services (Article 49).

(Garcia, 2009)

Specific provisions of the treaty for public procurement are Articles 28 and 49. Article 28 prohibit all restrictions on imports from member states and discrimination in procurement between member states. The scope of the article covers firstly any measures that discriminate directly between domestic and imported produce, such as by national policies. It is in place to allow free movement of goods within EU member states. Article 49 covers freedom to provide service: it allows for an open market to provide services in any member state and it goes on to prohibit practices such as reserving contracts for national firms only. These rules are binding on member states and enforceable against them and their procurement functions. The procurement directives in the EU regulate procedures for governments awarding major contracts and provides the means to enforce these procedure. They require public bodies to award contracts transparently, ruling out discrimination and allowing access to vendors from member stated to bid by advertising contracts (Thai, 2009).

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The EU regulates public procurement by creating free market; this policy is based on the theory of comparative advantage, i.e. a state enjoys a comparative advantage in producing certain goods efficiently in comparison with other member states and trades its needs from other member states that also have a comparative advantage in another type of good or service (Thai, 2009). The various rules created to implement this policy in procurement come from two sources, the EC treaty and the procurement directives.

Public sector contracts are estimated to account for 16.5 percent of the EU GDP. The Commission's attempt to use legislation to expose the public sector to increased cross-border competition and greater openness have met with limited success in the past. The first EC directives on procurement were adopted in the 1970s but there was little evidence of their ability to open up the award of public sector contracts to cross-border competition. The directives were then extended in the 1990s after the Commission's report in 1996 made it clear that the economic results achieved in public procurement fell short of expectations and since then, the directives have changed again (Ramsey, 2006). The EU had adopted various procurement directives, however, in 1998, all existing directives were replaced and the rules on contract award procedures are contained in two directives. Adopted in 2004, these are Directive 2004/18/EC and Utilities Directive 2004/17. Directive 2004/18/EC (Public Sector Directive) was transposed by member states into national law in January 2006. The Directives regulates contracts awarded by 'contracting authorities' in public sectors across the member states; it covers all procurement entities in all member states and government departments, local and regional authorities, any bodies governed by public law.

The main advancements and changes in the EU procurement regime are pointed out in Table 2.4

<b>The explicit recognition of the use of centralized purchasing</b>
The explicit acceptance of the use of framework agreements, albeit subject to the conditions set out in the directive
Revision of Threshold values
Amendments to the provisions relating to technical specifications removing the obligatory use of reference to European standards
The introduction of electronic procurement mechanisms, and the reduction in relevant time limits in the event of electronic communication
Explicit approval of the use of social and environmental considerations in the setting of specifications, selection and award criteria in the application of contract conditions
The introduction of new requirements for minimum qualification and the relative weighing of selection and award to be disclosed in advance

**Table 2.4: Advancements and Changes in the EU Procurement Regime, (Garcia, 2009, p87)**

As mentioned above, the directives only apply to 'contracting authorities' and purchasers who do not fall within a contracting authority's definition are not subject to the public procurement directives. There are two types of entities that are contracting authorities, public authorities and bodies governed by public law. Public authorities means the state (all bodies that exercise legislative, executive and judicial functions within it), and regional or local authorities.

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Garcia (2009) explains that the term ‘bodies governed by public law’, which are associations formed by public authorities, raises various issues and that the directives have now included an annex clarifying the use of the term (Annex III). The list is extensive and contains names of all bodies that the member states consider to fall within this category.

The Directive 2004/18/EC covers all types of contracts and applies in principle to works contracts, supply contract and service contracts and defines public contracts as ‘public contracts are contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their objective the execution of works, the supply of products or the provision of services within the meaning of this directive’ (Garcia, 2009). Although coverage is generally broad, some contracts are excluded under Directive 2004/18/EC; the main exclusions are concessions, certain contracts for defense relating to security concerns and secrecy, certain financial services and utility contracts, which are covered by Utilities Directive 2004/17 (Thai, 2009). Directive 2004/18/EC applies only to contracts above a certain financial threshold; these thresholds are revised every two years and published in Euros in the Eurozone, and in other currencies outside the zone (Thai, 2009). As mentioned above, the directive only applies to contracts above certain financial thresholds i.e. contracts with an estimated value above these limits must be in compliance with the Directive 2004/18/EC. The financial thresholds are (Garcia, 2009):

- Works contracts Euro5.5million
- Supply contracts Euro0.206million
- Service contracts Euro0.206million

Directive 2004/18/EC does, however, contain a prohibition on the splitting of contracts to smaller values over a period of time so as not to fall within the threshold. Where contracts are subdivided, the total value of works will be taken into account for the purpose of calculating the threshold value (Gracia, 2009).

Major principle of Directive 2004/18/EC is that a contracting authority must act transparently in all its acquisitions: the primary requirement to achieve transparency is met by obligation to:

- publish a notice in relation to the intended contract in the official journal of the European Union
- provide minimum levels of information about the procedure and contracts concerned
- ensure the minimum periods of time are observed for completion of the various stages of the procurement procedure; and
- keep candidates updated on the process and informed of the outcome.

The three primary procedures in the Directive 2004/18/EC are (Garcia, 2009)

- a) open procedures, whereby all interested contractors, suppliers or service providers may submit bids
- b) restricted procedures, whereby only those contractors suppliers or service providers invited by the contracting authority may submit tenders

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- c) Negotiated procedures whereby contracting authorities consult contractors, suppliers or service providers of their choice and negotiate the terms of the contract with one or more of them.

Directive 2004/18/EC lays down rules and procedures for the evaluation and award process and contains two complementary set of rules, the qualitative selection rules and the minimum-permitted candidate rules. Whilst having to ensure genuine competition, the contracting authority can still specify the minimum and maximum number of candidates. The directive also sets detailed criteria of suitability; firstly the question of suitability looks at areas such as bankruptcy and professional misconduct from vendor's side. Secondly, it sets out how to look at the financial wellbeing of the vendors, that is evidence of financial standing and thirdly, the technical ability of the vendor is also examined (Garcia, 2009).

In terms of actual awarding of contracts there are only two possible criteria (Garcia, 2009)

- Lowest Price
- Most Economically Advantageous Offer (MEAT)

The 'most economically advantageous offer' will include factors such as quality, technical merit, lead time, environmental, after-sales and price etc. However, the contracting authority is required to provide weighting to all the mentioned factors unless it is impossible to do so, providing it demonstrates reasonably why it cannot (Garcia, 2009).

Thai (2009) mentions that one of the more controversial issues under the EU procurement regime is to the extent to which the laws limit government in using procurement to promote policy goals (non-procurement policy) as discussed earlier, such as economic development of ethnic minority groups. Member states are constrained in their policies. Arguably governments can usually justify hidden political policies, even in the common market, as local suppliers do not face, for example, language barriers and are geographically better located. However the limit on a government's freedom to implement national procurement policies does cause a degree of conflict. Garcia (2009) argues that in a decentralized system such as the EU, although the EC treaty must always be followed, in practice it will be national implementation measures that drive the procurement process; the national rules must comply with the EU rules but are always much broader. Garcia (2009) also points out that in a procurement procedure, the focus will be on compliance with EU rules only when there is scope for dispute or challenge.

Thai (2009) argues that the very value of the EU approach in achieving the benefits of open markets is questionable for several reasons. Firstly, a degree of discretion remains inevitable, and there is also hidden discrimination. Secondly, transparency rules are somewhat difficult to apply and there may be good cause to reduce transparency where it hinders effective procurement. Due to these very tight constraints, some have suggested adopting a different approach; that the EU regime should only focus on limited and specific types of contracts where the greater cross-border benefits are to be realized, such as very large infrastructure contracts (Martin, 1996 as cited by Thai, 2009). Another radical suggestion is to abandon the EU requirement for

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transparency and to allow entities to focus solely on compliance with treaty principles in whichever way they choose (Thai, 2009)

## **2.7 UNCITRAL Model Law on Procurement of Goods, Construction and Services**

In 1986 the UN Commission on International Trade Law decided to undertake work in the area of procurement, which led to the adoption of the Model Law on Procurement of Goods, Construction and Services by UNCITRAL at the 26<sup>th</sup> session in Vienna in 1993 (UNCITRAL, 2012). The law was introduced with a Guide to enactment that explains the rationale for its provisions to legislators and policy formulators (Garcia, 2009). The Model Law is intended to serve as a model for states for the evaluation and modernization of their procurement laws and practices, and the establishment of procurement legislation should there not be any in place. This was a response by UNCITRAL to the fact that, in a number of countries existing legislation governing procurement was inadequate or outdated (UNCITRAL, 2012). While sound procurement practice and laws are essential in all countries, the Model Law used around the world both in developing nations and as template for reform in the developed nations (Yukins, 2009).

The Model Law has become an international benchmark in procurement law reform (Garcia, 2009). Enacting states are not required to advise UNCITRAL when they adopt the Model Law but it is understood that the law on procurement has been adopted or used as a basis for local legislation in several states, such as Albania, Azerbaijan, Croatia, Estonia, Gambia, Kazakhstan, Kenya, Malawi, Poland, Romania and Uganda. The Guide to Enactment comprises a general discussion of the principles and the procedures of the Model Law, followed by an article-by-article commentary. The Law is a suggested text for legislators to perhaps use or tailor to their own local procurement legislation, not a binding prescriptive text, and legislators are free to amend various provisions or adopt them as a whole (Garcia, 2009). UNCITRAL (2012) states that the Model Law may help remedy the disadvantages that stem from inadequate procurement legislation creating obstacles to international trade.

UNCITRAL (2012) also mentions that inadequate public procurement legislation results in inefficiency and ineffectiveness in the procurement process, patterns of abuse, and the failure of the public purchaser to obtain value in return for the expenditure of public funds. The objectives of the Model Law are to maximize competition, according to fair treatment to suppliers bidding to do government work, and to enhance transparency and objectivity, all of which are essential to fostering economy and efficiency in procurement and for curbing abuses (UNCITRAL, Model Law Guide to Enactment, 2012). These have been summarized by Garcia (2009):

- a) Maximizing economy and efficiency in procurement
- b) Fostering and encouraging participation in procurement proceedings by suppliers and contractors, especially, where appropriate, participation by suppliers and contractors regardless of nationality, thereby promoting international trade.
- c) Promoting competition among suppliers and contractors for the supply of the goods, construction or services to be procured.
- d) Providing for the fair and equitable treatment of all suppliers and contractors

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- e) Promoting the integrity of and fairness and public confidence in the procurement process
- f) Achieving transparency in the procedures relating to procurement.

Ssennoga (2006) argues, however, that developing countries face a problem in opening up procurement markets to all suppliers, irrespective of their country of origin, even though the benefit of opening up is that it enhances competitiveness, which ultimately leads to efficient use of public resource. Developing countries who may discriminate against foreign firms are motivated by the desire to achieve benefits such as stimulating industry, fostering underdeveloped regions and job creation (Ssennoga, 2006). Various countries have procurement policies that are intended to protect national sovereignty and, although desirable as this may seem to developing nations, it also has serious implications as far as free trade is concerned.

Ssennoga (2006) argues that developing nations are somewhat at a disadvantage: this is due to the fact developed nations have the capacity to bid in developing countries whilst developing countries lack the capacity to bid in the international procurement market due to lack of expertise and poor production quality, hence deeming them to be uncompetitive. Developing countries may indeed benefit from free procurement markets, however sovereign nations are only willing to accept foreign competition in procurement markets if they are convinced that benefits outweighs the loss of power to utilize public procurement as a means towards promoting domestic policies (Discherdorfer, 2000).

## **2.8 World Trade Organization's Agreement on Government Procurement**

Government procurement is of great economic significance, accounting for considerable proportions of national GDP and having a great impact on the efficiency of the use of public funds and more generally on public confidence and good governance (WTO, 2012).

*'The former Director of the WTO Pascal Lamey states that Government procurement is gaining ground as part of world trade, and as part of the work of the World Trade Organization (WTO). During, and in the aftermath of, the world economic crisis, much attention has focused on public infrastructure investment and on government policies that potentially limit the rights of foreign suppliers to bid on related contracts' (Arrowsmith, 2011),*

The vast importance of government procurement has been enhanced by the increased importance of public infrastructure investment and other procurement activities as an aspect of world economic activity in the context of the recent economic crisis (Arrowsmith, 2011). Also relevant is an increasing recognition, both in scholarly writing and in public policy formulation, of the role of governance mechanism, i.e., the rules and institutions that establish the framework for the operation of markets as an underpinning principle of long term economic growth and prosperity (Arrowsmith, 2011).

Trionfetti (2000) states that it is usually recognized that discriminatory procurement favoring domestic suppliers constitutes a barrier to trade and international competition. Opaque tendering process and poor governance tend to discourage potential bids from both domestic and international firms, often leaving governments depend on a small group of insider firms, and this according to Evenett (2003), often leads to governments paying more for less. Hunja (2003) has

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identified impediments to unilateral reform of domestic procurement; deeply vested interests and lack of political will, scarcity of technical capacity, and complexity of issues involved. Evenett (2003) notes that an alternative for improving procurement practices is in context of an international trade agreement.

- Various treatment and no-discrimination for the suppliers of parties to the agreement with respect to procurement
- Transparency and procedures aspects of the procurement process
- Transparency of procurement related information
- Accession to the agreement of further WTO members

Whilst the GPA is the main element in the WTO that provides a framework for the conduct of international trade in government procurement markets, it is also considered to serve broader purposes with relation to good governance and the attainment of value for money in national procurement systems (WTO, 2012). Open, transparent and non-discriminatory procurement is generally considered to be the best tool to achieve 'value for money' as it optimizes competition among suppliers. The GPA now seems poised for an increasingly important role within WTO as an instrument of international economic law. This indicated, mentions Arrowsmith (2011), by the increasing importance of public regulations and with:

- The gradually growing membership of the Agreement
- The prospect of eventual accession to the Agreement by major developing countries and
- The ongoing modernization of the Agreement, which is intended, among other purposes, to facilitate future accessions.

(Arrowsmith, 2011)

The Malawi has been a member of WTO since 31 May 1995. However it is not a GPA member yet. The revised GPA has been open for signature by Parties since April 2012. Despite its being open the protocol enter into force for those Parties to the 1994 Agreement that have deposited their respective instruments of acceptance thereof, on the 30<sup>th</sup> day following such deposit by two thirds of the Parties to the 1994 Agreement. Also as between a Party to the 1994 Agreement, which is also a Party to the Protocol, and another Party only to the 1994 Agreement, the 1994 Agreement shall continue to apply.

The current GPA members who are Parties are 43 comprised of the 15 + EU countries namely: Armenia, Canada, European Union with regard to its 28 Member States, Hong Kong, Iceland, Israel, Japan, Korea, Liechtenstein, the Netherlands with respect to Aruba. Norway, Singapore, Switzerland, Chinese Taipei and the United States. There are 29 observer countries namely Albania\*, Argentina, Australia, Bahrain, Cameroon, Chile, Columbia, Georgia\*, India, Peoples Republic of China\*, Indonesia, Jordan\*, Kyrgyz Republic\*, Malaysia, Moldova\*, Mongolia, Montenegro\*, New Zealand\*, Oman\*, Panama\*, Saudi Arabia, Sri Lanka, Turkey, Ukraine\*, Vietnam, Pakistan, Russian Federation, and a number of international organizations. The 10 members marked with a star were negotiating for accession. In addition to countries, four intergovernmental organizations also have observer status, namely the International Monetary

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Fund (IMF), the International Trade Centre, the Organization of Economic Co-operation and Development (OECD) and the UN Conference on Trade and Development UNCTAD;

Key features of the GPA include National Treatment and Non-Discrimination for the suppliers of Parties to the Agreement. With respect to procurement of covered goods, services and construction services as set out in each Party's schedules (Appendix I) and subject to various exceptions and exclusions that are noted therein. Threshold values for applying GPA are based on contract values exceeding the ones below:

Entity	Procurement Category	Amount (SDR)	Applicable annex
Central Government Entities	Goods and Services	130,000.00	I
Sub-central Government Entities	Goods and Services	200,000.00	II
Other Entities (Utilities)	Goods and Services	400,000.00	III
All Entities	Construction Services	5,000,000.00	

**Table 2.5 Threshold Values for applying GPA (WTO, 2015, p40)**

It should be noted however that the minimum thresholds may differ between countries, in particular regarding construction services and utilities.

With respect to any measure regarding covered procurement. Each party, including its procuring entities, is required to accord immediately and unconditionally to the goods and services of any other Party and to the suppliers of any other Party offering goods or services of any Party, including procuring entities accords to:

- a) Domestic goods or services and suppliers; and
- b) Goods, services and suppliers of any other Party

With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

- a) Treat a locally established supplier less than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or
- b) Discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of any other Party.

The GPA further states that under covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset. Exceptions are, however possible for developing countries.

The GPA just like most public procurement frameworks encourages transparency and procedural aspects of the procurement process in general as its main feature designed to ensure that covered procurement under the Agreement is carried out in a transparent and competitive manner that does not discriminate against the goods, services or suppliers of other Parties;

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In other words the General Principles of the GPA allude to the fact that a procuring entity shall conduct covered procurement in a transparent and impartial manner that is consistent with the Agreement, using methods such as open tendering, selective tendering and limited tendering which is by invitation without advertising. Requirement for availability and adequacy of domestic review procedures for supplier challenges which must be put in place by all Parties to the Agreement. WTO's Dispute Settlement Understanding applies to this area (the availability and adequacy of domestic review procedures for supplier challenges which must be put in place by all Parties to the Agreement).

Recognizing the need to take into account the development, financial and trade needs of developing countries, in particular least developed countries, recognizing the importance of transparent measures regarding government procurement, of carrying out procurements in a transparent and impartial manner and of avoiding conflicts of interest and corrupt practices, in accordance with applicable international instruments, such as the United Nations Convention Against Corruption; recognizing the importance of using and encouraging the use of, electronic means of procurement covered by the Agreement.

In negotiations on accession to and in the implementation and administration of the Agreement, the Parties shall give special consideration to the development, financial and trade needs and circumstances of developing countries and least developed countries, recognizing that these may differ significantly from country to country. Based on its development needs, and with the agreement of the Parties, a developing country may adopt or maintain one or more of the following transitional measures, during a transition period and in accordance with a schedule, set out in its relevant annexes and applied in a manner that does not discriminate among the other Parties:

- a) A price preference program, provided that the program provides a preference only for the part of tender incorporating goods or services originating in the developing country applying the preference and is transparent, and the preference and its application in the procurement are clearly described in the notice of intended procurement;
- b) An offset provided that any requirement for, or consideration of, the imposition of the offset is clearly stated in the notice of intended procurement;
- c) The phased-in addition of specific entities or sectors; and
- d) A threshold that is higher than its permanent threshold

When conducting covered procurement by electronic means, a procuring entity shall:

- Ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and
- Maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

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In conducting covered procurement a procuring entity shall do so in a transparent and impartial manner that avoids conflicts of interest and prevents corrupt practices. The parties also undertake further negotiations, with a view to improving the Agreement, progressively reducing and eliminating discriminatory measures, and achieving the greatest possible extension of its coverage among all Parties on the basis of mutual reciprocity, taking into consideration the needs of developing countries.

This specifically covers the items such as i) the treatment of small and medium-sized enterprises; ii) the collection and dissemination of statistical data; iii) the treatment of sustainable procurement; iv) exclusions and restrictions in Parties' Annexes; and v) safety standards in international procurement.

(WTO, 2015)

Trade agreements, local or international have been highlighted by Thai (2001) as being a challenge to public procurement; how to comply with government procurement regulations and social and economic procurement goals without violating any trade agreements. He mentions that because markets have become more globalized through trade agreements such as the GPA, public procurement practitioners face challenges to both comply with these agreements and their own procurement laws and policies. This causes something of a dilemma where procurement practitioners are torn between trade agreements and their countries economic development/stabilization policies (Thai, 2001). Although non-discrimination lies at the core of the GPA. Evenett (2003) is critical of some aspects of the GPA, he states that:

*'we can expect, with a reasonably high degree of confidence that membership of this agreement (GPA) translates into lower procurement costs'*

(Evenett, 2003, p4)

He continues that 'how much lower' is yet to be established with confidence and comments that the GPA falls short of its potential for two reasons: firstly, that discrimination has only been tackled partially and, secondly, that the benefits of membership of the GPA are highly contingent on the extent of bribery and corruption in an economy. He argues that the GPA does not deliver much in terms of improvements to market access, or welfare for developing countries and raises the question for policymakers whether a reformed GPA with additional focus on transparency is likely to better meet the needs of developing countries. Although a number of observers have argued that the WTO's GPA is the best vehicle for future reform, the problem is that many developing nations have been reluctant to join the GPA, mainly because doing so means opening domestic procurement markets to foreign competition which, for many developing nations, Malawi inclusive of course, is politically untenable (Yukins, 2009). A concern of some WTO members in relation to GPA accession has been that accession may conflict with particular social policies developed nationally for various countries' procurement regimes such as initiatives related to Black Economic Empowerment in South Africa (Arrowsmith, 2011).

Ssennoga (2006) argues that placing tight controls as a way to develop local industries tends to reduce local competition and customer expectations, which inevitably results in local firms

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either unable to achieve high levels of quality or ending up with the view that improving quality is unnecessary. Arrowsmith (2011) mentions that, in the past year or so, the importance of the GPA as an element of the WTO system has been reinforced by developments related to the economic crisis and related stimulus measures. Together with the current emphasis on infrastructure spending as an element of economic stimulus, there has a worldwide trend towards the introduction of 'buy national' policies in public procurement regimes to boost local economies and industry.

Alongside free trade initiatives such as the GPA, procurement practices also evolved in the context of international financial institutions; the World Bank and other regional development banks have played a vital role in shaping principles for public procurement. These banks, mention Ssennoga (2006), have established detailed policies and procedures for procurement without regard to political or non-economic influences or considerations (Arrowsmith et al., 2000).

### **2.9 World Bank and Multilateral Financing Institutions Public Procurement System.**

The World Bank was originally the International Bank for Reconstruction and Development created for the reconstruction of the world economy after World War II. The World Bank essentially lends states money at low interest or no interest at all and its main goals have expanded over into a more global role in addressing various issues, such as:

- a) Poverty reduction and sustainable growth in the poorer countries, in particular, Africa
- b) Solutions to the special challenges of post-conflict and fragile states
- c) Development solutions with customized services, as well as financing for middle income countries
- d) Regional and global issues that cross national borders
- e) Greater development and opportunity in the Arab world
- f) Pulling together the best global knowledge to support development

(Garcia, 2009, p47)

A particular challenge that is faced by the World Bank is that there are no harmonized procurement rules at the international level yet, in many countries, it is considered a sovereign tool. However, when a state is spending money borrowed from the World Bank, the aim and goals of the bank must be considered and reflected in the procurement policies. This is further complicated by the fact the borrowing states do not usually have developed procurement systems that are transparent and efficient. Considering that the World Bank loans US\$38 billion annually, procurement is prescribed and stipulated through the loan agreement to the borrowing state (Garcia, 2009).

The World Bank procurement policies are very sophisticated: these policies are embodied in two documents:

- a) Guidelines which have been drafted on the basis of three fundamental principles; non-discrimination, equity and transparency

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- b) Standard bidding documents; a standard set of mandatory template documents including standard model contract conditions.

Procurement processes are monitored by the procurement department of the World Bank which is also committed to promoting the development of the borrowing state's procurement process (Garcia, 2009).

Procurement guidelines are divided into two main groups:

- a) Goods, works and simple services (not intellectual services) are governed by the Red Guidelines
- b) Intellectual services are governed by the Green Guidelines.

### **2.9.1 Red Guidelines**

There are four factors that generally cover the World Bank's requirements:

- a) The need for economy and efficiency in the implementation of the project, including the procurement of the goods and works involved.
- b) The Bank's interest in giving all eligible bidders from developed and developing countries the same information and an equal opportunity to compete in providing goods and works financed by the World Bank;
- c) the World Bank's interest in encouraging the development of domestic contracting and manufacturing industries in the borrowing country; and
- d) the importance of transparency in the procurement process.

(Garcia, 2009, p48)

- **Procurement methods**

Borrowing states are to select the most suitable method for the specific procurement. In most cases international competitive bidding is the most preferred method unless there are provisions for domestic preference where appropriate; Limited international bidding is the competitive bidding procedure normally used for public procurement in the country of the borrower and may be appropriate in procuring goods or works which, by their scope, are unlikely to attract foreign competition. Shopping is a procurement method based on comparing price quotations obtained from several suppliers with the minimum of three, to assure competitive prices. It is an appropriate method for procuring readily available, off the shelf goods, standard specification commodities or civil works of small value. Direct contracting is contracting without competition and may be used in the following circumstances:

- a) An existing contract for goods or works, awarded in accordance with procedures acceptable to the World Bank, may be extended to additional goods and works of a similar nature. The Bank must be satisfied in such cases that no advantage could be obtained by further competition and that the prices on the extended contract are reasonable; if considered likely, provision for extension should be included and mentioned in the original contracting documents.

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- b) Standardization of equipment or spare parts, for the purpose of achieving compatibility with existing equipment, may justify additional purchases from the original supplier; for this to be justified, the original equipment must be suitable, the number of new items should generally be lower than the existing number, the price must be reasonable, and the possible advantages of another make or source of equipment must have been considered and rejected on grounds acceptable to the Bank.
- c) The required equipment is proprietary and obtainable only from one source.
- d) The contractor responsible for a design process requires the purchase of critical items from a particular supplier as a condition of performance guarantee
- e) An exceptional case has arisen such as in response to a natural disaster
- f) The Bank requires that, after a contract is signed between a borrower entity and a supplier, the borrower must publish the name of the supplier, price, duration and summary scope of the contract in the United Nations Development Business (UNDB) online.

### **2.9.2 Green Guidelines**

Five main considerations guide the World Bank's procurement process:

- a) The need for high quality services
- b) The need for economy and efficiency
- c) The need to give all qualified consultants an opportunity to compete in providing the services financed by the Bank;
- d) The Bank's interest in encouraging the development and use of national consultants in its developing member countries; and
- e) The need for transparency in the selection process.

#### **• Selection methods**

- a) Quality and cost based selection: use a competitive process among shortlisted firms. It takes into consideration the quality of a proposal and the cost of the services in the selection of the successful firm. Cost as a factor or selection must be used with caution. The relative weight given to the quality and cost will be determined in each case, according to the nature of the assignment. The selection process must include several steps which are developed in the guidelines:
  - i. Preparation of terms of reference
  - ii. Preparation of cost estimate and budget
  - iii. Advertising
  - iv. Preparation of the shortlist of consultants
  - v. Preparation and issuance of the request for proposals
  - vi. Receipt of proposals
  - vii. Evaluation of technical proposals and consideration of quality
  - viii. Public opening of financial proposals
  - ix. Evaluation of financial proposals

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- x. Final evaluation of quality and cost and
  - xi. Negotiations and award of the contract to the selected firms
- 
- b) Quality based selection is reserved for assignments which are complex or highly specialized, for which it proves difficult to draft terms of reference, and where the client expects the consultants to demonstrate innovation in their proposal.
  - c) Selection under a fixed budget is reserved for situations where the assignment is simple and can be well-defined for a fixed budget. The request for proposal must indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes
  - d) Least cost selection applies to assignments which are routine in nature, where well established practices and standards exist
  - e) Selection based on the consultants qualifications used for smaller assignment for which the need for preparing and evaluating competitive proposals is not justified.
  - f) Single source selection where consultants can be used in exceptional cases and in the context of the overall interest the client and the project.

### **2.9.3 The standard bidding document system**

The World Bank has also developed three main sets of standard bidding documents which standardize and facilitate the process of preparation and evaluation of the bids, as well as contract performance. Along with the guidelines, this allows for a robust and perhaps failsafe procurement regime. This turnkey process provided to the borrowing state facilitates the evaluation and control mechanism. The detail and complexity of these documents may vary with the size and nature of the proposed bid package and contract, but generally include

- Invitation for bids
- Instruction to bidders
- Bid data sheet
- Evaluation and qualification criteria
- Bid forms
- Employer's requirements
- Specifications and drawings
- List of goods or bill of quantities
- Delivery schedules
- Conditions of contract
- Necessary appendices such as formats for various securities

Garcia (2009) mentions it is perhaps fair to say that the World Bank procurement process is becoming a reference point throughout the world as it has achieved a balance of being comprehensive, flexible, and results oriented and has easy to understand objectives. However, he also critiques the regime as, in several states, the transparency and equality of treatment principles are not always implemented, which inevitably results that the chosen consultant's actual performance has often led to disappointing results (Garcia, 2009).

## **2.10 Methods of state public procurement policy assessments**

It is impossible, argues Schapper et al. (2006), to develop a comprehensive framework for the understanding, analysis or management of public management, which is independent of its political context. Gilbert (2008) questions the notion of best practice, stating that best practice is looked as being the best in the specific field. Systems and processes that are clearly defined, achievable and put in place will provide an overall procurement process that is fit for an organizations requirements. He highlights some example definitions but states that it is important to realize that 'one size fits all' does not work well, and that situations differ, especially in developing countries due to lack of infrastructure and the ability to put in place and carry out procurement practices at all, let alone implementing best practice.

Some example definition of best practice could be:

- 'A best practice is a technique or methodology that, through experience and research has proven to reliably lead to a desired result.'
- 'a way or method of accomplishing a business function or process that is considered to be superior to all other known methods.'
- 'Recommendations regarding processes techniques for the use or implementation of products or services.' (Gilbert, 2008, p1055)

Once perceived as a perpetual activity (Davy, 2003 as cited in Knight et al, 2007), public procurement is now recognized as one of the central elements of good governance, according to the OECD. Callendar (2007) suggests that procurement is much more than a process or procedure, it is fundamental and integral part of the governance and public financial system. Although potential savings account for much of the sudden interest in public procurement (Callendar, 2007), it has been argued that the interest is also driven by some further factors (Asian Development Bank 2002, as cited by Callendar, 2007):

- Increased number of player created by the decentralization of governments
- Demand for transparency
- Trade and investment

A joint Organization of Economic Cooperation and Development (OECD)-Development Assistance Committee (DAC)/World Bank Round Table initiative to strengthen public procurement in developing countries identified corruption and the lack of transparency in public procurement as two major obstacles to sustained economic growth and called for procurement strategies that addressed:

- Political and managerial will
- Enactment and enforcement of procurement laws and regulations
- Transparent and accountable bidding processes
- Institutional improvements
- Enhancement of professional skills
- Standard procurement approaching and
- Ethical codes/integrity pacts

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It is widely acceptable that the OECD/World Bank Country Procurement Assessment Report (CPAR) is the most utilized assessment of state procurement regimes. It is a diagnostic tool the primary objective of which are to:

- Provide a comprehensive analysis of the country's public sector procurement system including the existing legal framework, organization responsibilities and control and oversight capabilities, present procedures and practices, and how well these work in practice.
- Undertake a general assessment of the institutional, organizational and other risks associated with the procurement process, including identification of procurement practices unacceptable for use in Bank-financed projects;
- Develop a prioritized action plan to bring about institutional improvements and
- Assess the competitiveness and performance of local private industry with regard to participation in public procurement, and the adequacy of commercial practices that relate to public procurement.

The CPAR includes a description of the elements of a well-functioning procurement system and a checklist of questions to be investigated for each important aspect. The OECD-DAC tool offers a detailed and operational assessment framework, categories into four pillars:

- Pillar I: Legislative and regulatory framework
- Pillar II: Institutional framework and management capacity
- Pillar III: Procurement operations and market practices
- Pillar IV: Integrity and transparency of the procurement system

These four pillar are then sub-divided into 12 indicators and a total of 54 sub-indicators, focusing both on systemic and compliance/performance related aspects of a procurement system. It provides a 'standard' against which to compare a procurement system and is intended as a tool to be used either as input to capacity development or to risk assessment by donors (Jenson, 2008).

### **2.11 Malawi Public Procurement**

The Legal and Regulatory Framework defining Malawi's public procurement emanates from reforms to Government procurement systems and procedures. Since Malawi attained independence in 1964 public procurement was centralized through the Central Tender Board (CTB) which was the main authority responsible procurement, monitoring and provision of oversight responsibilities of public procurement activities in Malawi. That was later replaced by the Government Contracting-out Unit (GCU).

Since mid-1990s the Government of Malawi (GoM) has been implementing a number of public and civil service reforms aimed at streamlining both the public and civil services to improve efficiency and effectiveness and maximize development effectiveness. Following the diagnostic study that took place in 1996 under the Public Procurement and Supply Management Reform Program to address problems experienced in public procurement activities a procurement code was drafted that provided for the setting up of an autonomous public procurement authority. The Public Procurement Act (PPA) came into force in August 2003. Most important of all, the Act

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provided for the establishment of an independent Directorate namely the Office of the Director of Public Procurement (ODPP) as a regulatory and oversight body of public procurement.

Parallel the ODPP the Public Procurement was fully decentralized and Specialized Procurement Units (SPUs) at Procuring Entity (PE) level were created. The Act adheres to the principles of the United Nations Commission on International Trade Law (UNCITRAL) model law and the principles of open, transparent procurement procedures, clear evaluation criteria, award of contract to the lowest evaluated bidder, etc. As stated in the 2007 Procurement Capacity Assessment report for Malawi conducted by the UNDP, the reform has provided legislative and regulatory framework. The major achievement of the ODPP is the publication of procurement regulations of 2004 and further deliberations in the Desk Instructions for public procurement and subsequent issuance in 2006 of Standard Bidding Documents of works, small works and consultancy services.

The Government of Malawi under its PPA operates a decentralized procurement system where Procuring Entities undertake their own respective procurement using own Internal Procurement Committees (IPC). The ODPP provides oversight responsibilities and has issued a number of standard bidding documents (SBD), the use of which is mandatory, covering works, goods, and services. The Office further issued desk instructions, RFP and form of contract for Consulting Services as well as request for quotations for goods, works and services.

During the research the author obtained a copy of a Public Procurement Act (2003) and Public Procurement Regulations (2004) and Desk Instructions (2004) alongside the standard bidding documents.

## **2.12 Challenges and Influences in Public Procurement**

*'Public procurement is one of the least understood and most vulnerable areas of public areas of public administration'* (Schapper et al., 2006, p2)

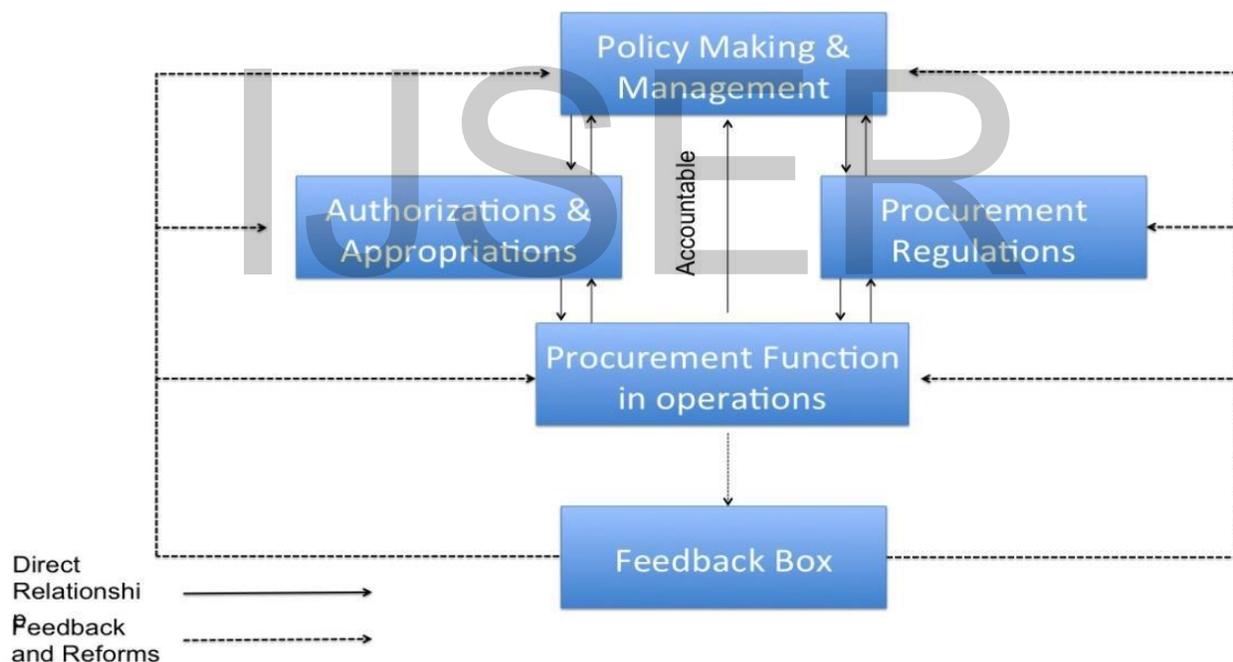
Procurement management includes an element of law, finance and accounting, risk management and politics. Where practitioners in each of the mentioned fields have a claim on public procurement as their remit (Schapper et al, 2006), a lack of consensus can be found worldwide in procurement governance. Thai (2001) notes that there are five challenges in public procurement. Firstly, how to efficiently manage the sheer magnitude of procurement outlay, which has a great impact on the economy. Secondly, the challenge of achieving economic, social and other objectives through public procurement has been perceived as an area of waste and corruption and overcoming this negative perception is one of the biggest challenges in public procurement. Fourthly, as many countries have now moved to a regional or international economy, public procurement faces the challenges of how to comply with their governments procurement regulations and social and economic procurement goals without violating any trade agreements, regional or international. As an example is the question of how to comply with a national economic policy of nurturing local firms whilst not treating foreign firms unfairly as provided for in WTO agreements or other regional agreements. Finally, in both developing and developed countries, a sound procurement system has to accomplish two sets of requirement: management requirements and policy requirements with procurement policy requirements normally having economic goals such as preferring domestic products and firms and social goals such as assisting

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minority-owned businesses this barrier makes it very difficult for policymakers to make an optima decision, as there will always be tradeoffs.

Thai (2011) developed a model depicting the scope of public procurement, which consists of five elements: policymaking and management; authorization and appropriations; procurement regulations, and procurement functions in operations. He further mentions that the ability to accomplish procurement objectives and policies is influenced by internal factors as below:

- Interaction between various elements of the procurement systems,
- Type of goods, services and capital access required
- Professionalism of procurement workforce
- Staffing levels i.e. ration of procurement practitioners to contract actions
- Procurement organizational structure such as the issue of centralization vs. decentralization
- Procurement regulations and guidelines
- Internal control and legislative oversight



**Figure 2.3 Public procurement system (Thai, 2001, p10)**

As well as internal factors affecting public procurement systems, Thai (2001) mentions that there are also external factors; he explains that procurement practitioners have always faced challenges imposed by a variety of environmental factors such as markets, legal, environmental, organizational, as well as political and socio-economic factors.

As mentioned previously in this chapter, the decision to adhere to trade agreements whilst maintaining national policies is challenging; market conditions have great influence on public

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procurement efforts to maximize competition, as there are varying levels of economic growth amongst the various states of the world, market conditions are favorable in industrialized countries, not so favorable in developing countries (Thai, 2001).

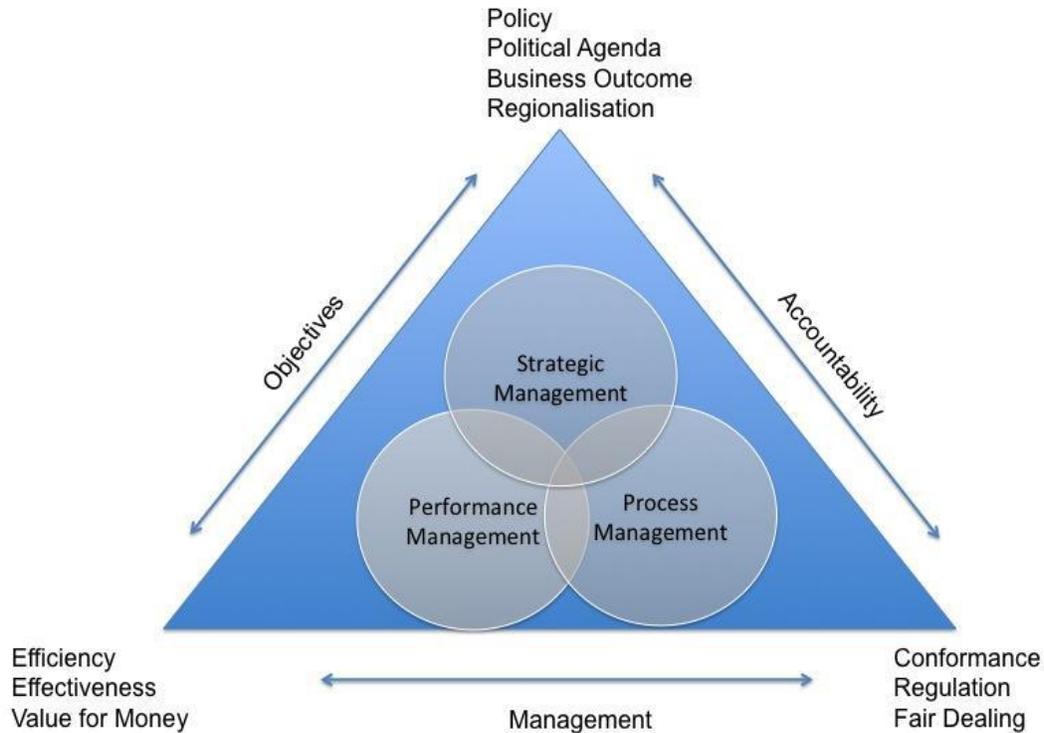
The legal environment, as mentioned by Thai (2001), is also considered as an external factor that influences public procurement; apart from public procurement regulations, the legal environment refers to a broader legal framework of any given country that governs all business activities, these vary from financial, environmental and marketing laws which have an effect on the market environment of a country. Thai (2001) mentions that this is an influencing factor particularly in developing countries, or those in transition, where legal systems are not comprehensive. This is particularly true for the case of Malawi; the current procurement regulations in place today are those that came into effect in 2004, which is 40 years after independence.

The political environment is also an influencing factor; in a democracy, groups, individuals, organizations and interest groups are actively involved in all aspects of public procurement systems, such as lobbying legislative bodies to pass or alter procurement policies, influencing implementation and also influencing budget authorization and appropriations. This leads to governments adopting programs, which are a compromise among the various different viewpoints of the interest groups, policymakers and management (Thai, 2001).

Thai (2001) also mentions that, while countries impose social policies on their public procurement, most government entities in developed or developing countries use their large procurement outlays for economic stabilization or development purposes. Foreign policy is also an influencing factor on procurement, where many countries have used public procurement as tool to achieve foreign policy (Thai, 2001). For example during the conflict in Libya, large public contracts were used as a bargaining tool by the rebel government at the time; countries who recognized the rebels as the legitimate representatives of Libyan people would be looked favorably upon in Libyan public contracts. Thai (2001) mentions that public procurement practitioners in poor and weak countries are facing the problem of having to face the foreign policy of other nations in their procurement decisions. This is again true in the Libyan context where unfrozen assets and loans from countries were provided to the rebel government to be used for specific purchases, and in the case of Turkey on the condition that all public procurement was made from Turkey.

The procurement management framework by Schapper et al. (2006) illustrates that, only when governments recognize the scope of public procurement in relation to the various elements of process, performance and strategic imperatives, can they develop the skills, incentives, performance measures and tools to deliver political or community expectations. Figure 2.3 illustrates that any public procurement exercise can be subject to competing goals of conformance and performance management, whilst either of these may also be competing with broader strategic political goals of government.

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**Figure 2.4: The procurement Management Framework (Schapper et al., 2006, p130)**

Each of these elements, argues Schapper (2003), has varying regimes and is likely to be associated with the centralization/decentralization conflict that is often evident in procurement reforms in particular:

- Strategic management will be consistent with the centralization of contract design and documentation, specification and evaluation, and the regulation of process (central agencies).
- Performance management will be consistent with the decentralization of contract specification, evaluation and regulation, but the decentralization of contract value such as in operational organizations and public works.
- Process management will be consistent with the devolution of contract processes in the area of shopping method and in smaller organizations.

Managing public procurement requires arbitration amongst the various elements but this is rarely evident in practice (Schapper et al., 2006).

Mathews (2005) also identifies boundaries that are facing public procurement; he comments that, because government agencies are limited to uniform and routine standards, this restricts creativity and innovation. He further comments that there is also an ethical boundary; he argues that, as government officials expend public funds that have been requested and approved, their activity is the last step in transforming taxes to expenditures;

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*‘Caution must be employed by purchasers, however, as their activities are masked at times from public accountability’ (Matthews 2005, p397)*

Matthews (2005) continues on the same theme. Because the academic community, which is a formidable player within public administration, has not embraced government procurement there is a lack of educational alignment in the field. He comments that, although there has been progression in the area from the ‘back room to the boardroom’ this lack places purchasers in a position of:

*‘Pushing around enormous amounts of money, without specialized education’ (Callender as cited by Mathews 2005, p390)*

Prescriptive frameworks and regulations, such as the micro-regulation mentioned by Schapper et al (2006), has a consequence of eroding the skill requirements of procurement officials, and this lack of professionalism inevitably increases the need for further regulation, as well as reducing value for money in procurement which requires management skills. Schapper et al. (2006) continues to argue that the transparency goal of a regulatory model can also be self-defeating whereby the volume of regulation acts to complicate transparency by making difficult for stakeholders to comprehend. Rendon and Snider (2010) state that the neglect of supply management related subjects in public administration education is remarkable in several aspects, not only because of the historic accounts that have repeatedly demonstrated its important role in government operations, but also the sheer magnitude of resources devoted to public procurement.

With the public procurement function being the one most prone to corruption (Thai, 2008), transparency and accountability ought to be key cornerstones of public procurement. This is particularly true in developing countries (Thai, 2008) where there is insufficient transparency and competition in the procurement process. Daniel Kaufman (2005) of the World Bank estimates that more than US1 trillion is paid annually in bribes (Thai, 2004). With 25 percent of Africa’s GDP estimated to be lost every year to corruption (Thachuk, 2005 as cited by Estach & Limi, 2011), it is also clearly a major factor that influences procurement policy development. Garcia (2009) explains that public procurement raises many complex problems, beginning with unclear and opaque rules, which are the product of poor public policies and the corruption and inefficiency caused by outdated practices. Garcia (2009) mentions that public procurement faces many challenges, some of them practical which threaten competition, transparency and equality of treatment, and some of them shadowy, such as dealing with cartels and the fight against corruption.

Another factor identified in the literature, which inevitably leads to corruption is remuneration of public procurement officials. Public organizations are expected to do more for less (Germond & Witcover, 1993) and this need has led to a requirement for economic efficiency and quality management of public services. Public Purchasing Managers face this balance and requirement head-on and it is therefore extremely important that these managers be compensated appropriately (Alkadry, 2004).

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Gelleri (2004) explains in Greek mythology, the roots of the Trojan War lay in a ‘beauty contest’ between three goddesses namely; Hera Athena, and Aphrodite. Paris was instructed by Zeus to decide the issue of ‘the fairest goddess’. In order to win the contest, Hera promised Paris power, Athena promised him wealth, while Aphrodite promised the most beautiful woman in the world. The moral of the story, explains Gelleri (2014), seems to be that unethically influencing a decision-maker is as old as human civilization.

The situation today has not changed since that time; at the third millennium, the issue of corruption seems more prevalent than ever before. Corruption might be difficult to define precisely, argues Gelleri (2004), nevertheless it is a damaging phenomenon, which has riddled countries such as Malawi over the past 50 years of independence and continues to do so this day. Surveys such as that carried out by Transparency International reveal that there are hardly any nations untouched (Gelleri, 2004).

As mentioned, the phenomenon of corruption has existed over the ages and is well documented in all civilizations ever since ancient times. Attention during the Arab Spring for instance was focused on the endemic corruption, which had caused decade-long dictatorship to fall. The impact of the flood of media accusations of corruption at the highest levels in government, including presidents and prime ministers of countries, contributed to corruption appearing as one of the problems of most concern to citizens and confirmed that a weakness in institutions can go so far as to destabilize an entire region (Aniaz, 2006). As Gelleri mentions, this is not unique to developing nations; examples of the problem have been uncovered in the Enron case in the US; in South Korea, where President Roh Tae Woo was seen to be implicated in bribery in connection with the purchase of aircraft; and in Singapore, where several multinational firms and a senior official of the Public Utility Board were involved in a series of payments made to receive confidential information on tenders (Aniaz, 2006). In Germany, France also experienced a scandal of a similar scale in which high ranking politicians were put on trial in the Elf-Aquitaine affair. In Spain, the Roldia’n case was one of the corruption trials to receive exposure in the western media (Aniaz, 2006). In Greece, which faces its worst economic crisis in modern history, contractors of public procurement sometimes seek to enhance their political leverage in order to strengthen their business prospects. Owners of construction companies also became major shareholders in media companies and, as a result, fears arose during the late 1990s that the power of the media might influence decisions regarding public contractors and that media power was too concentrated in a handful of powerful organizations. This led to the introduction of legislation which as revised in the Constitution in 2001 which stipulated that owners, partners, main shareholders or senior executives, (or their next of kin) of media companies cannot be owners, partners, main shareholders or senior executives of companies engaged in public procurement projects.

*‘the harmonization of Greek procurement rules with those of the EU has been a long and difficult process; although it has gradually progressed toward full compliance this , however applies in theory and not necessarily in practice’*(Garcia, 2009 as cited in El-Gayed, p53)

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Any assessment of levels of corruption is a challenging task; nevertheless, since 1995, the Corruption Perception Index compiled by Transparency International has established itself as a robust measurement tool to the effect. The index ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians, and is drawn up on the basis of surveys conducted by independent entities in each country among business people, analysts and the general public (Aniaz, 2006). According to this index, Malawi ranks as 110 out of the 174 countries in the Index as illustrated in Table 2.6 below, (Transparency International, 2014).

<b><i>Country</i></b>	<b><i>Rank</i></b>
<i>Denmark</i>	1
<i>News land</i>	2
<i>Luxemburg</i>	9
<i>Australia</i>	11
<i>Morocco</i>	70
<i>Algeria</i>	100
<i>Malawi</i>	110
<i>Mozambique</i>	119
<i>Somalia</i>	174

**Table 2.6: Corruption Perception Index Sample of 9 countries (Transparency International, 2014, p14)**

Policymakers crafting a sound procurement system must balance a number of goals. Competition, transparency and integrity are probably the most important element (Yukins, 2006). If a government's procurement system reflects all three elements, the system is much more likely to accomplish best value in procurement, and to preserve political legitimacy.

Two ongoing initiatives in the UN offer an opportunity to draw together the parallel tracks of the improving procurement and fighting corruption (Yukins, 2006).

The first initiative is that of the UN's effort to combat corruption around the world. In December 2000, the UN General Assembly passed Resolution 55/61, which called for an international legal instrument against corruption (Yukins, 2006). The UN Convention on Corruption was adopted by the UN General Assembly on 31<sup>st</sup> October 2003, and was opened for signature. The UN Convention against Corruption is the first truly global agreement against corruption (Yukins, 2006). As of mid-2006, 140 countries had signed the Convention, of which 60 countries had ratified or acceded to the Convention including Malawi.

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**PART TWO: - Frame of Reference on Corruption**

This corruption frame is divided into three sections. The first section describes briefly how poverty and corruption are defined and measured in the literature. The second section presents the prominent themes that emerged from my review of the literature on corruption and poverty. Within this section, theoretical propositions are discussed, empirical research studies that support or refute them are described, and implications are drawn. The third section summarizes the major themes uncovered in my review.

**2.13 Definition of Corruption**

Public sector corruption is commonly defined as the misuse of public office for private gain. The USAID Handbook for Fighting Corruption (1999) describes the various forms that corruption can assume: It encompasses unilateral abuses by government officials such as embezzlement and nepotism, as well as abuses linking public and private actors such as bribery, extortion, influence peddling and fraud. Corruption arises in both political and bureaucratic offices and can be petty or grand, organized or disorganized. Corruption is inherently a secretive transaction and, thus, difficult to observe and measure. Several organizations – including the World Bank, Transparency International (TI), and Pricewaterhouse Coopers Foundation – have attempted to develop corruption indicators; all of them depend on aggregate surveys of citizens, businesses or experts and therefore base their results on perceptions of the problem as opposed to more objective data. While these measurement approaches have acknowledged reliability and validity problems, they are the best that we have for the time being (MSI, 2002; Johnston, 2000; Johnston and Kpundeh, 2002). In general, these are the indices employed in the poverty-corruption research. "Second generation" governance indicators currently under development may resolve some of the measurement and methodological issues.

**2.14 Defining Poverty and Corruption**

Poverty is a complex phenomenon. It is usually defined in relation to income, often measured in terms of per capita gross domestic product (GDP). Extreme poverty is often defined as an income of less than \$1 per person per day in terms of purchasing power parity (PPP). Critics argue that measuring poverty in terms of GDP or PPP does not fully capture the phenomenon of poverty. A broader definition treats poverty as multidimensional, including (i) low income, (ii) low levels of education and health, (iii) vulnerability (to health or income loss, natural disaster, crime and violence, and education curtailment) and (iv) voicelessness and powerlessness (feeling discrimination, lacking income earning possibilities, mistreatment by state institutions, and lacking status under the law) (World Bank, 2001). Many other indicators such as caloric intake and female literacy are also used. While measuring poverty in terms of income level may seem relatively straightforward, the multidimensional approach is more complex and involves factors that are difficult to quantify. To manage this complexity, researchers have developed indices, such as the UNDP Human Poverty Index, which conceives of poverty in terms of longevity, knowledge, and economic provisioning.

A substantial number of recent studies have examined the relationship between poverty and corruption to clarify the ways in which these phenomena interact. Corruption in the public sector -- the misuse of public office for private gain -- is often viewed as exacerbating conditions of

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poverty (low income, poor health and education status, vulnerability to shocks and other characteristics) in countries already struggling with the strains of economic growth and democratic transition. Alternatively, countries experiencing chronic poverty are seen as natural breeding grounds for systemic corruption due to social and income inequalities and perverse economic incentives. The literature points to the conclusion that corruption, by itself, does not produce poverty. Rather, corruption has direct consequences on economic and governance factors, intermediaries that in turn produce poverty. Thus, the relationship examined by researchers is an indirect one.

### **2.15 Relationship between poverty and corruption**

In their final report to USAID on corruption and poverty, Eric Chetwynd, Frances Chetwynd and Betram Spector (2003) based their discussion on two major models explaining this moderated linkage between corruption and poverty: These are an economic model and a governance model.

### **2.16 Economic Model of Corruption**

The literature shows an inverse correlation between aggregate economic growth and corruption; in general, countries with higher corruption experience less economic growth. Many of the studies reviewed for this paper address the channels through which corruption affects economic growth, for instance, through impacting investment and entrepreneurship, distorting markets, and undermining productivity. Furthermore, there is empirical evidence that corruption aggravates income inequality and is associated with slower economic growth. Finally, studies present evidence that as the rate of economic growth increases, the number of people above the poverty line tends to rise as well.

The Economic Model thus postulates that corruption affects poverty by first impacting economic growth factors, which, in turn, impact poverty levels. Economic theory and empirical evidence both demonstrate that there is a direct causal link between corruption and economic growth. Corruption impedes economic growth by discouraging foreign and domestic investment, taxing and dampening entrepreneurship, lowering the quality of public infrastructure, decreasing tax revenues, diverting public talent into rent-seeking, and distorting the composition of public expenditure. In addition to limiting economic growth, there is evidence that corruption also exacerbates income inequality; regression analysis has shown a positive correlation between corruption and income inequality. Explanations for this link are that corruption distorts the economy and the legal and policy frameworks allowing some to benefit more than others; there is unfair distribution of government resources and services; corruption reduces the progressivity of the tax system; corruption increases the inequality of factor ownership; and lower income households (and businesses) pay a higher proportion of their income in bribes than do middle or upper-income households. Economic growth and income inequality are important because they link corruption to poverty. Studies show that the absence of economic growth (or negative growth) increases poverty. Inversely, tests have shown that an increase in GDP produces an increase in the income of the poor. However, income distribution is an important mediating factor because economic growth may not always benefit the poor.

## **2.17 Corruption Impedes Economic Growth**

The relationship between corruption and economic growth is complex. Economic theory supports the notion that corruption hinders economic growth in the following ways:

- Corruption discourages foreign and domestic investment: rent taking increases costs and creates uncertainty, reducing incentives to both foreign and domestic investors.
- Corruption taxes entrepreneurship: entrepreneurs and innovators require licenses and permits. Paying bribes for these goods cuts into profit margins.
- Corruption lowers the quality of public infrastructure: public resources are diverted to private uses, standards are waived; funds for operations and maintenance are diverted in favor of more rent seeking activity.
- Corruption decreases tax revenue: firms and activities are driven into the informal or gray sector by excessive rent taking and taxes are reduced in exchange for payoffs to tax officials.
- Corruption diverts talent into rent seeking: officials who otherwise would be engaged in productive activity become pre-occupied with rent taking, in which increasing returns encourage more rent taking.
- Corruption distorts the composition of public expenditure: rent seekers will pursue those projects for which rent seeking is easiest and best disguised, diverting funding from other sectors such as education and health.
- Corruption discourages domestic investment. In Bulgaria, about one in four businesses in the entrepreneur sample had planned to expand (mostly through acquiring new equipment) but failed to do so, and corruption was an important factor in their change of plans.

These theoretical propositions are supported by a number of empirical studies. They demonstrate that high levels of corruption are associated with low levels of investment and low levels of aggregate economic growth. For example, the results of several World Bank corruption surveys illustrate this inverse relationship between corruption and economic growth. The Latvia study surveyed enterprises that had dropped planned investments. It found that the high cost of complying with regulations and the uncertainty surrounding them, including uncertainty regarding unofficial payments, were important factors for 28 percent of businesses foregoing new investments.

- Corruption hurts entrepreneurship especially among small businesses. Several studies reported that small businesses tend to pay the most bribes as a percentage of total revenue (especially in Bosnia, Ghana, and Slovakia). In Poland, businesses have to deal with a large number of economic activities that are licensed, making them more prone to extortion.
- Corruption decreases revenue from taxes and fees. In Bangladesh, more than 30 percent of urban household respondents reduced electric and/or water bills by bribing the meter reader. In several studies, respondents were so frustrated that they indicated a willingness to pay more taxes if corruption could be controlled (Cambodia, Indonesia, and Romania).

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In a cross-national analysis of corruption and growth for the IMF, Tanzi and Davodi (1997) tested four hypotheses designed to explain four channels through which corruption reduces growth. Using regression analysis, results established that higher levels of corruption were associated with:

- Increasing public sector investment (but decreased productivity).
- Reduced government revenues (reducing resources for productive expenditures).
- lower expenditures on operations and maintenance (where other studies show that high government consumption is robustly associated with lower economic growth, and
- Reduced quality of public infrastructure (as shown by indicators for road conditions, power and water losses, telecom faults and proportion of railway diesels in use). (Barro 1996, p21-22)

All of these findings are consistent with the observation that corruption is inversely correlated with growth in GNP. A seminal study by Mauro (2002) used a composite of two corruption indices and multiple regression analyses with a sample of 106 countries to show that high levels of corruption are associated with lower levels of investment as a share of Gross Domestic Product (GDP) and with lower GDP growth per capita. Extrapolation of these results by the researcher suggested that if a country were to improve its corruption index from a score of six to eight on a ten-point scale, it would increase the investment rate more than 4 percent and annual per capita GDP growth would increase by nearly one-half percent. Recent work by Lambsdorff (forthcoming) casts additional lights on how corruption affects investment, specifically, the relationship of investment to GDP. The study categorized investment into domestic savings and net capital inflows. Regression results provided evidence that corruption negatively impacts on capital accumulation by deterring capital imports. To explore causation, Lambsdorff decomposed the corruption index into several sub-indicators that look at corruption through the lens of bureaucratic quality, civil liberty, government stability, and law and order. Only the law and order sub-indicator turned out to be important for attracting capital flows. Another World Bank study (2000a) suggests that higher levels of corruption reduce growth through decreased investment and output. This comprehensive study looked at 22 transition countries and examined two forms of corruption – state capture and administrative corruption – and their impact on selected economic and social indicators. Data for the study were derived from the Business Environment and Enterprise Performance Survey (BEEPS).

### **2.18 Corruption Exacerbates Income Inequality**

Several studies have demonstrated a relationship between corruption and income inequality. The theoretical foundations for this relationship are derived from rent theory and draw on the ideas of Rose-Ackerman (1978) and Krueger (1974), among others. Propositions include:

- Corruption may create permanent distortions from which some groups or individuals can benefit more than others.
- The distributional consequences of corruption are likely to be more severe the more persistent the corruption.

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- The impact of corruption on income distribution is in part a function of government involvement in allocating and financing scarce goods and services (Gupta, Davoodi, and Alonso-Terme, 1998).

A World Bank study (2000c) of poverty following the transition to a market economy in Eastern Europe and Central Asia (ECA) produced important findings concerning income distribution and corruption. The study analyzes data on firms' perceptions of corruption and notes that more firms in ECA report that corruption is a problem than in most other geographic regions. The authors analyzed whether there "is any apparent link, within ECA, between corruption and measures of income inequality" (World Bank, 2000c: 169). When Gini coefficients for income per capita (measures of income inequality) were graphed against the Transparency International (TI) Corruption Perceptions Index (CPI), lower levels of corruption were seen to be statistically associated with lower levels of income inequality (simple correlation was +0.72). Similar results were obtained using different measures of corruption. The authors add that closer examination of the links between corruption and inequality show that the costs of corruption fall particularly heavily on smaller firms. This report also examined the relationship between a particular type of corruption, state capture, and income inequality. State capture describes the situation where businesses have undue influence over the decisions of public officials.

The report notes that differences in income inequality in the ECA countries are greatest in those countries where the transition has been least successful and where state capture is at its highest. In these countries, state capture has allowed large economic interests to distort the legal framework and the policy-making process in a way that defeats the development of a market economy. The report explores the relationship between state capture and income inequality through regressions of the Gini coefficient on measures of state capture and other variables and finds that a higher degree of state capture is correlated with higher inequality. The relationship holds even when controlling for political freedoms, location, and years under state planning (World Bank, 2000c: 172). Gupta et al. (1998) conducted cross-national regression analysis of up to 56 countries to examine the ways that corruption could negatively impact income distribution and poverty.

The study looked at the following relationships:

- Growth: Income inequality has been shown to be harmful to growth, so if corruption increases income inequality, it will also reduce growth and thereby exacerbate poverty.
- Bias in tax systems: Evasion, poor administration, and exemptions favoring the well-connected can reduce the tax base and progressivity of the tax system, increasing income inequality.
- Poor targeting of social programs: Extending benefits to well-to-do income groups or siphoning from poverty alleviation programs will diminish their impact on poverty and inequality (and will tend to act as a regressive tax on the poor, enhancing income inequality). The study examined these propositions through an inequality model using a Gini coefficient to measure inequality. The model specified the personal distribution of income in terms of factor endowments,

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distribution of factors of production and government spending on social programs. The model used several indices of corruption. The statistically significant results include:

- i. Higher corruption is associated with higher income inequality such that a worsening of a country's corruption index by 2.5 points on a scale of 10 corresponds to an increase in the Gini coefficient (worsening inequality) of about 4 points. Tests showed the same results for an average decrease in secondary schooling by 2.3 years, as an example of the significance of corruption.
- ii. Even controlling for stage of economic development, corruption appears to be harmful to income inequality. Moreover, a test of directionality suggests that it is corruption that increases inequality and not the reverse.
- iii. Corruption tends to increase the inequality of factor ownership.
- iv. Corruption increases income inequality by reducing progressivity of the tax system, that is, the impact of corruption on income inequality was shown to be higher after taxes. (Gupta et al, 1998, p.27)

In another study of 35 countries (mostly OECD countries), Karstedt (2002) hypothesized that corruption supports, stabilizes and deepens inequality. Her measures of corruption (Transparency International's CPI and Bribery Propensity Index) were tested against measures of income distribution (as well as measures of power distance between elites and other ranks, and general trust). Results showed that societies with high income inequality have high levels of corruption, while those with high levels of secondary education and a high proportion of women in government positions have decreasing levels of corruption. The relation between measures of corruption and the Gini index of income inequality was nonlinear, indicating that after countries attain a specific level of income equality, corruption tends to decrease exponentially.

How does corruption exacerbate income inequality? Evidence from diagnostic surveys of corruption in several countries suggests that corruption aggravates income inequality because lower income households pay a higher proportion of their income in bribes. In conclusion, the literature establishes clearly that corruption impedes economic growth and augments income inequalities. How does reduced economic growth, in turn, increase poverty?

### **2.19 Reduced Economic Growth Rates Increase Poverty**

There is evidence that the absence of economic growth (or negative growth) increases poverty. Quibria's study (2002) suggests that the burden of rapid economic retrenchment, such as seen recently in Thailand and Indonesia, hurts the poor most heavily. Similarly, in the transition countries of the former Soviet Union (FSU), the changeover to a market system was associated with a sharp initial drop in output and significantly higher levels of poverty. The expansion of poverty was initiated by the collapse of GDP, which fell by 50 percent in the FSU countries and percent in Central and Eastern Europe. Poverty was found to be highly correlated with administrative corruption and corruption was empirically associated with lower economic growth rates (World Bank, 2000a).

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Using a poverty model, the Gupta et al (1998) study conducted a cross-national analysis of selected countries to examine the relationship between growth and poverty. Their poverty model used the income growth of the bottom quintile as the dependent variable regressed against growth in GNP, natural resources, initial income of the lower quintile, initial secondary schooling, education inequality, initial distribution of assets (Gini for land), social spending and growth in corruption. The authors found that higher growth is associated with poverty alleviation.

Dollar and Kraay (2002) of the World Bank Development Research Group studied a sample of 80 countries over four decades and showed that income of the lowest 20 percent of the population rise one for one with increases in per capita GDP. Moreover, using tests for directionality, they concluded that a 1 percent increase in GDP actually causes a 1 percent increase in the incomes of the poor. In his comprehensive study of the so-called Asian Tigers, Quibria (2002) gives a good example of rapid economic growth (during the 1980s and 1990s) leading to a substantial decrease in those living below a poverty line of \$1.25 per day. Further, in those countries with a more equitable distribution of income at the outset, the decrease in poverty tended to be more robust. However, even in this special case of multiple country rapid growth in a particular region, income distribution remained more or less constant over the period of growth. Similarly, Ravallion and Chen (in Easterly, 2001: 13-14) examined 65 developing countries between 1981 and 1999. They found that the number of people below the poverty line of \$1 per day was reduced in countries with positive economic growth. However, they concluded that "measures of inequality show no tendency to get either better or worse with economic growth." In conclusion, these studies show conclusively that income rises with economic growth and vice versa. It should be noted that economic growth does not necessarily lead to more equal income distribution; an increase in income may benefit the better-off rather than bringing the poor out of poverty. Income distribution seems to be an important moderating factor in the relationship between economic growth and poverty reduction.

## **2.20 Governance Model of Corruption**

The governance model postulates that increased corruption reduces governance capacity, which, in turn, increases poverty conditions. Kaufmann et al. (1999) define governance as "the traditions and institutions by which authority in a country is exercised. This includes:-

- The process by which governments are selected, monitored and replaced
- The capacity of the government to effectively formulate and implement sound policies, and
- The respect of citizens and the state for the institutions that govern economic and social interactions among them."

Corruption disrupts governance practices, destabilizes governance institutions, reduces the provision of services by government, reduces respect for the rule of law, and reduces public trust in government and its institutions. Impaired governance, in turn, reduces social capital and public trust in governance institutions; this reduces the public funds available to support effective

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economic growth programs and reduces the capability of government to help its citizens and the poor, in particular.

### **2.21 Corruption Degrades Governance**

Johnston (2000) suggests that serious corruption threatens democracy and governance by weakening political institutions and mass participation, and by delaying and distorting the economic development needed to sustain democracy. In a study of 83 countries, Johnston compares Transparency International's CPI with an index of political competitiveness and finds that well-institutionalized and decisive political competition is correlated with lower levels of corruption. These results were confirmed, even when controlling for GDP and examining the relationship over time. Diagnostic surveys of corruption in Bosnia -Herzegovina, Ghana, Honduras, Indonesia and Latvia report that government institutions with the highest levels of corruption tend to provide lower quality services. The converse is also true: in Romania, the survey shows that state sector entities with better systems of public administration tend to have lower levels of corruption.

The literature shows that corruption impacts the quality of government services and infrastructure and that through these channels it has an impact on the poor. This is particularly the case in the health and education sectors. Enhanced education and healthcare services and population longevity are usually associated with higher economic growth. But under conditions of extensive corruption, when public services, such as health and basic education expenditures that especially benefit the poor, are given lower priority in favor of capital intensive programs that offer more opportunities for high-level rent taking, lower income groups lose services on which they depend.

As government revenues decline through leakage brought on by corruption, public funds for poverty programs and programs to stimulate growth also become scarcer. Gupta, Davoodi and Tiongson (2000) used regression analysis across a large sample of countries to assess an aggregate measure of education outcome and health status in a model that includes several corruption indices, per capita income, public spending on health care and education, and average years of education completed. The results supported the proposition that better health care and education outcomes are positively correlated with lower corruption. In particular, corruption is consistently correlated with higher school dropout rates and corruption is significantly correlated with higher levels of infant mortality and lower-birth weights of babies.

Mauro looked at the relationship between corruption and the composition of government spending. He found evidence that corrupt governments may display predatory behavior in deciding how to distribute government expenditures. Specifically, his data showed corruption negatively related to education and health expenditures.

Extrapolating from his findings, an increase in the 10-point corruption score, from 6 to 8, would yield an increase in education spending by one-half of one percent of GDP (Mauro, 2002). Gupta et al. (1998) also found that corruption can lead to reduced social spending on health and education. Countries with higher corruption tend to have lower levels of social spending, regardless of level of development. Corruption lowers tax revenues, increases government

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operating costs, increases government spending for wages and reduces spending on operations and maintenance, and often biases government toward spending on higher education and tertiary health care (rather than basic education and primary health care).

### **2.22 Impaired Governance Increases Poverty**

Pioneering research on the relationship among corruption, governance and poverty has been conducted at the World Bank in 1999, by the team of Kaufmann, Kraay and Zoido-Lobaton. Their studies suggest an association between good governance (with control of corruption as an important component) and poverty alleviation. Kaufmann et al. (1999) studied the effect of governance on per capita income in 173 countries, treating “control of corruption” as one of the components of good governance. Using a database of over 300 indicators of governance taken from a wide variety of cross-country studies for the years 1997-98, the team constructed aggregate indicators corresponding to six governance concepts. Analysis showed a strong positive causal relationship running from improved governance to better development outcomes as measured by per capita income.

A one standard deviation improvement in governance raised per capita incomes 2.5 to 4 times. Analysis of updated indicators for 2000-2001 did not change these conclusions. Kaufmann and Kraay (2002) used updated governance indicators to gain a more nuanced understanding of the role of good governance in the relationship between corruption and growth in per capita incomes. Using governance data for 2000/01, the authors establish empirically that for Latin American and Caribbean countries (i) better governance tends to yield higher per capita incomes, but (ii) higher per capita incomes tend to produce reduced governance capacity. The authors attribute this second finding to state capture. In short, the authors suggest that corruption (in the form of state capture) may interfere with the expected relationship between economic growth (higher per capita incomes) and better governance. The authors note that an empirical in-depth examination of the phenomenon of state capture in the Latin American and The Caribbean (LAC) region is part of the upcoming research agenda. The effect of governance on corruption and poverty is illuminated by another World Bank study (2000a). The deterioration in governance discussed in this study was accompanied by an increase in both corruption and poverty. Thus, as seen earlier, increases in corruption tend to deteriorate governance practices, but the reverse holds true as well – reduction in governance capacity increases the opportunities for corruption.

### **2.23 Reduced Public Trust in Government Increases Vulnerability of the Poor**

Corruption that reduces governance capacity also may inflict critical collateral damage: reduced public trust in government institutions. As trust -- an important element of social capital declines, research has shown that vulnerability of the poor increases as their economic productivity is affected. The concept of social capital refers to social structures that enable people to work collectively for the good of the group. One of the most important and widely discussed elements of social capital is trust. Both interpersonal trust and trust in institutions of government. Recent research on social capital suggests that there is a relationship between corruption, trust and poverty. The proposition is that corruption destroys people’s trust in government and other

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institutions. This effect is most salient for the lowest income groups and low social capital affects people's willingness and ability to engage in productive activity.

Empirical studies point to an association between low social capital and poverty, although the relationship is difficult to test and difficult to disentangle empirically from affluence and democracy. One of the effects of widespread corruption in government services is that it appears to contribute to disaffection and distrust, and this appears to impact particularly heavily on the poor. This is not surprising, because low income people are the ones who are most likely to be dependent on government services for assistance with basic needs, such as education and healthcare, and least likely to be able to pay bribes to cut through complex and unresponsive bureaucracies. Lack of trust has economic consequences. When people perceive that the social system is untrustworthy and inequitable, this can affect incentives to engage in productive activities. Knack and Keefer (1997) tested the relationship between social capital and economic performance in 29 market economies using indicators from the World Values Surveys (WVS) on interpersonal trust. They added the WVS trust measure to investment and growth regressions and found that trust correlated highly with economic growth. Each 12 percentage point rise in trust was associated with an increase in annual income growth of about 1 percentage point. They also found that the impact of trust on growth is significantly higher for poorer countries, suggesting that interpersonal trust is more essential where legal systems and financial markets are less well developed.

In a later study, Zak and Knack (1998) found that trust is higher in nations with stronger formal institutions for enforcing contracts and reducing corruption, and in nations with less polarized populations (as measured by income or land inequality, ethnic heterogeneity, and a subjective measure of the intensity of economic discrimination). They also showed that formal institutions and polarization appear to influence growth rates in part through their impacts on trust. For example, income inequality, land inequality, discrimination and corruption are associated with significantly lower growth rates, but the association of these variables with growth dramatically weakens when trust is controlled for. Knack (1999) also looked at the effect of social capital on income inequality. His study regressed various indicators of social capital and trust against income data by quintile and found that higher scores on property rights measures were associated with declines in income inequality. Using the WVS trust indicator, he also found that inequality declined in higher trust societies. Each 8 or 9 point increase in the percent trusting was associated with a one- point decline in Gini. This partial correlation was only marginally significant, however. Knack concludes that "social capital reduces poverty rates and improves – or at a minimum does not exacerbate – income inequality."

## **2.24 Conclusion of Part Two of the review**

Overall, the literature reviewed in this section demonstrates that corruption does exacerbate and promote poverty, but this pattern is complex and moderated by economic and governance factors. If carefully crafted, anti-corruption programs might yield important poverty reduction results. The literature suggests that programs that succeed in reducing corruption will contribute to poverty alleviation especially if they also achieve the following:

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- Increase economic growth
- Create more equitable income distribution
- Strengthen governance institutions and capacity
- Improve government services, especially in health and education
- Increase public trust in government.

There are many unanswered questions in the review, particularly regarding the manner in which these factors manifest themselves in different countries. More attention needs to be given to linking theory to empirical endeavors and to generating practical policy insights based on this.

- Economic growth is associated with poverty reduction
- The burden of rapid retrenchment falls most heavily on the poor.
- Corruption is associated with low economic growth
- Corruption reduces domestic investment and foreign direct investment
- Corruption increases government expenditures
- Corruption reduces public sector productivity
- Corruption distorts the composition of government expenditure, away from services directly beneficial to the poor and the growth process, e.g., education, health, and operation and maintenance.
- Better health and education indicators are positively associated with lower corruption
- Corruption reduces government revenues
- Corruption lowers the quality of public infrastructure
- Corruption lowers spending on social sectors
- Corruption increases income inequality
- Corruption increases inequality of factor ownership
- Inequality slows growth
- Corruption decreases progressivity of the tax system
- Corruption acts as a regressive tax
- Low income households pay more in bribes as percent of income
- Better governance, including lower graft level, effects economic growth dramatically
- Better governance is associated with lower corruption and lower poverty levels.
- High state capture makes it difficult to reduce inequality, even with growth
- Extensive, organized, well institutionalized and decisive political competition is associated with lower corruption
- Trust is a component of social capital. Higher social capital is associated with lower poverty. Corruption undermines trust (in government and other institutions) and thereby undermines social capital research. Finally, much can be learned from the experience of countries and donor organizations that initiate anti-corruption and anti-poverty programs. Compiling and analyzing such experience would provide valuable insights for future planning.

In conclusion, the literature reviewed in this corruption frame demonstrates that corruption does exacerbate and promote poverty, but this pattern is complex and moderated by economic and governance factors. Based on these findings, anti-corruption programs that are crafted to address

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issues of economic growth, income distribution, and governance capacity, government services in health and education, and public trust in government are likely to not only reduce corruption, but reduce poverty as well.

**PART THREE: - Interface of Procurement and Corruption**

In this section the frame of reference for corruption in public procurement is created with inputs from the two sections. This framework constitutes the structure for describing studies for corruption in public procurement found in the literature, desk studies and the departure point for analysis and conclusions.

**2.25 Corruption in Strategic Procurement Perspective**

<b>Procurement Strategy</b>	<b>Possible Corruption Issue</b>
a) Make-or-buy decision	When purchasing function is deliberately not involved in make-or-buy decisions in order to create a vacuum of knowledge on availability of alternative options, the firm may end up acquiring items which would otherwise be made internally or making items that would be outsourced with intention of personally gaining from the transactions.
b) Supplier technology (supply base structure)	Decision on how many suppliers should be used and how they should be organized and relate to each other is vital. Corrupt officials may deliberately choose procurement methods that favor a particular single supplier who offers bribes, thereby avoiding competition.
c) The type of supplier relationship desired.	The configuration of specific buyer supplier relationship is vital. Whether it means close collaboration alliance or based on pure market exchange. These relationships may be abused. For example a supplier may offer bribes in the name of close relationship. At the end of the day same suppliers may be awarded contracts on a silver platter without meaningful competition.
d) External market factors	This is basically boundaries a firm should establish for its activities. A lot of corrupt activities do take place when a firm is in the process of constructing its relationships with firms, suppliers, distributors and customers that are “outside” its boundaries.
e) How procurement can support the firm’s competitive strategy	Under what circumstances should an organization change its boundaries of business relationships and what effect will be on its competitive position? Corrupt officials may deliberately change relationship boundaries to remove suppliers that do not offer bribes.

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***Table 2.7 Corruption in Strategic Procurement Perspective (Dandiko, 2014 p26)***

**2.26 Corruption in the Procurement Process**

Ser.	Stage in the procurement process	Possible corruption issue
a)	Identification of needs by user departments.	When needs are being identified and during budgeting, entities may over-budget with ill intentions to abuse the extra funding for personal gains once the budget is approved.
b)	Conducting of market analysis.	Proper analysis of the market always gives true cost of items based on market pricing prevailing at the time the analysis is undertaken. If done with ill intentions the market prices may be distorted to include percentage of commissions for corrupt procurement officials. This is done to justify their actions.
c)	Preparation of bidding documents.	When coming up with terms of reference for the supply of goods and list of specifications, corrupt officials may do it in such a way as to favor their own preferred suppliers who usually give them bribes. This may lead to qualified firms falling out.
d)	Sending out invitation to bid and or request for quotation documents.	Choice of bidders to be contacted in case of RFQ may lead to bias ending up at only those with something for the corrupt officials receiving documents. In case of open tendering corrupt officials may choose media that reflect the type of bidders that are favorable to the suppliers.
e)	Preliminary review and short-listing.	During initial screening of bidders, qualifying bidders may be dropped in favor of unqualified because they are offering kick-backs.
f)	Bid Evaluation.	Even those bidders whose bids find their way to the evaluation stage may find themselves not being considered despite being responsive and competitive because they did not offer kickbacks.
g)	Contract negotiation and selection of suppliers.	Corrupt officials may negotiate for the price to go up to include a percentage for their so called commission based on WIIFM (what is in it for me) principle.

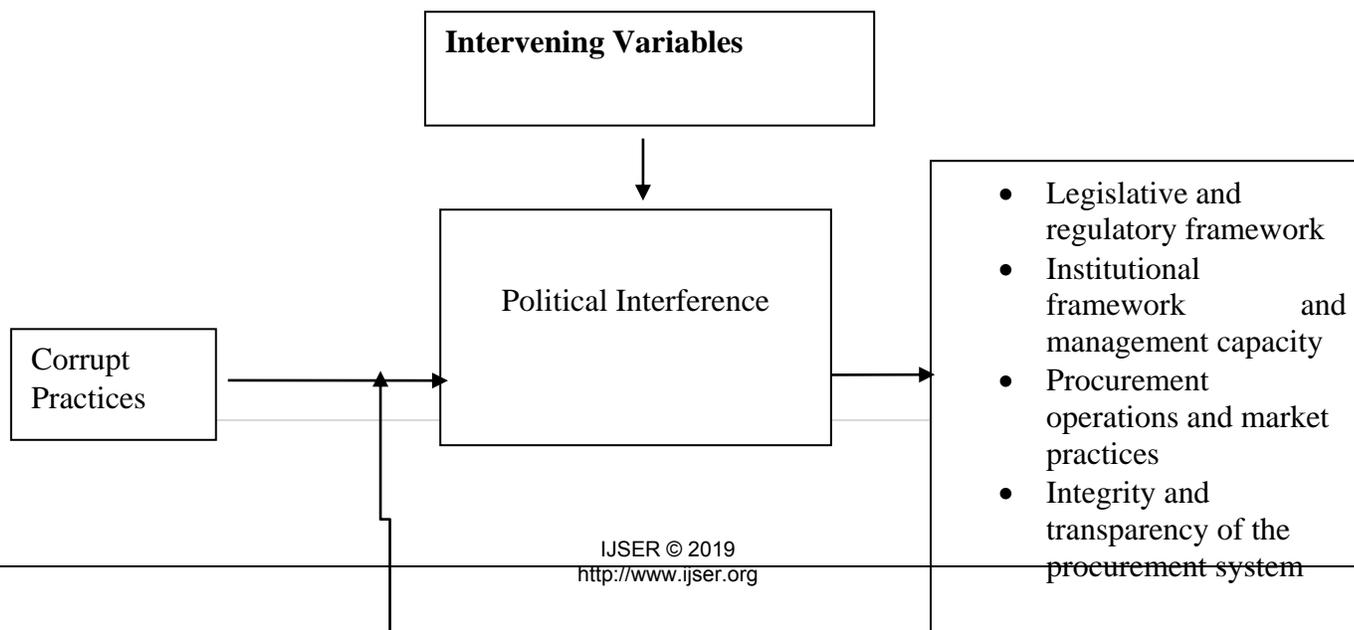
**Table 2.8: Corruption in the Procurement Process, (Dandiko, 2014, p32)**

**PART FOUR: Theoretical and Conceptual Framework-relationships between variables**

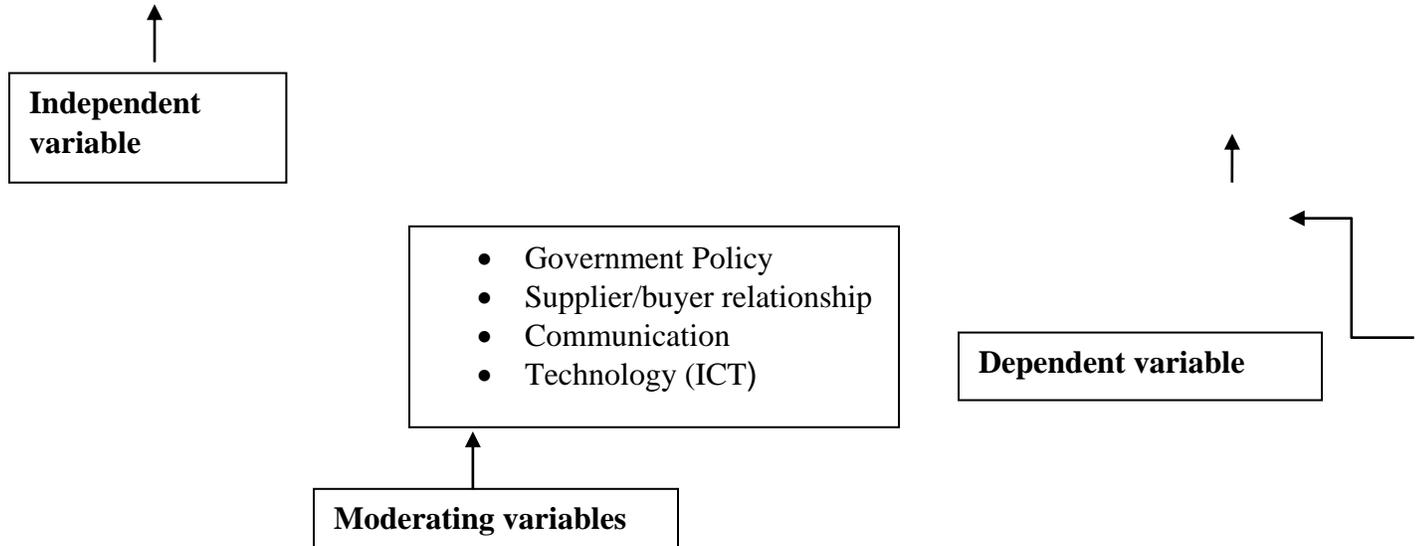
Corruption in procurement and contracting can take many forms including bribery, deception (fraud) as in cash-gate, or simple abuse. The risks of corruption in contracting can be more easily understood in relation to each stage of procurement cycle as highlighted above. The general belief however that, the risk of corruption is especially high during the evaluation phase of the contracting process. But the risks are not limited to this phase. Corruption can occur even before a contracting process start, when decisions are taken about what to contract. Underperformance, contract negotiation, change of orders, over billing, and non-compliance are just some of the forms of abuse been studied upon as they relate to procurement process (Mawanya, 2008)

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The research model of the study is presented in the diagram below:



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**Figure 2.6: Relationships among variables**

Corrupt practices is the **dependent variable**

**Independent variables** are as follow:

- Legislative and regulatory framework
- Institutional framework and management capacity
- Procurement operations and market practices
- Integrity and transparency of the procurement system

Political interference is the **intervening variable** because it will influence the behavior of the independent variable.

Some of the **moderating variables** include but not limited to:

- Supplier/buyer relationship
- Communication
- Technology (ICT)

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## CHAPTER THREE

### METHODOLOGY

#### **3.1 Introduction**

This chapter describes the research methodology adopted throughout this research to meet the research aims and objectives and to address the research questions. The chapter discusses research philosophies and approaches, and then provides an overview of research strategies and methods of data collection, whilst explaining the rationale behind the choices made in the approach, strategy and data collection methods.

#### **3.2 Research Philosophy**

Based on the characteristics of both positivistic and phenomenological philosophies and the nature of this particular research, the phenomenological philosophy underpins this study. This enabled the researcher to interact with the organization being studied (ODPP), so that the researcher could explore and understand the phenomenon of public procurement policy to be investigated. The objectives set for this research required a deep understanding of the social context within which it was set.

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### **3.3 Research Approach**

In any research there were basically two approaches available for use namely: the deductive approach which owes more to positivism, and an inductive approach which leans more towards the phenomenological research philosophy (Saunders et al., 2007).

### **3.4 Research Design**

Three widely used scientific measurements of corruption can largely apply to corruption in the public procurement sector. According to Frarida & Alhmadi-Esfahani, (2006, p. 15 as cited by Bashemuka and Tumutegereize (2009), the general perception methodology, the incidence based methodology and the transparency international expert evaluation methodology are the three methods which hold value in achieving the goal of estimating the spread and map of corruption. The first relies on the media coverage of corruption. Going by this measure procurement corruption news in Malawi captures headlines. The second methodology depends on asking the ones who potentially bribe and those whom bribes are offered and Manchin recommends this approach as the researcher is likely to get a good feedback on how frequent corruption is in different transactions. Data on corruption are usually expressed on some scale reflecting the perception of respondents Therefore most corruption indicators are not about the actual level of corruption, but about perceived corruption (Seldadyo & de Han, as cited by Bashemuka and Tumutegereize (2009).

This study was an exploratory research that identified relationship between dependent variable of corrupt practices with independent variable of public procurement as depicted in the 4 pillars namely: Legislative and regulatory framework; institutional framework and management capacity; procurement operations and market practices; and integrity and transparency of the procurement system. This choice of designing this research from an exploratory point of view was because very few studies have been conducted in this research area in Malawi.

This research was divided into two phases. First phase of the research employed the quantitative approach where the researcher administered the questionnaire to all eligible 20 Procuring Entities in phase one. This instrument was chosen because it could be self-administered and was simple to score and use.

The second phase was the interviews (or qualitative) approach that complemented data collected by the survey instrument. A unified approach to interview politicians as well as technical personnel in public sector in phase two was adopted in order to enable naturalistic and scientific comparison in between two groups of the continuum- policy framers (politicians) and policy implementers (public officer). Cassel, et al (2006) support the qualitative approach that interviews provide a rich source of data concerning current perceptions.

This study utilized a combination of the above two approaches which is referred to as a 'mixed approach'. Mixed approach primarily combines the quantitative and qualitative approaches. Eldabi et al (2002) explains that the basic objective of mixed approach provides a means of triangulation to achieve satisfactorily significant results.

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### **3.5 Sampling Design**

In order to overcome limitation that might come about due to limited information on the subject matter the participants sample included policy makers and public procurement officers. The sole criterion used was that participants were those involved in setting public policy that includes those governing public procurement and implementers of such procurement policy, rules and procedures. Therefore non-probability sampling was more favorable than probability sampling. Purposive sampling was therefore used.

Basically the sample selection criteria was that a Procuring Entity:

- a) Be a Government Institution
- b) Be a public entity
- c) Be a parastatal organization

### **3.6 Sampling Frame**

A purposive judgment sampling method was used since this research's objective was to obtain information from public officers and contractors/suppliers that were mostly readily available from the targeted selected list. The sampling was confined to public procurement officers and contractors/suppliers because they were considered to be the ones who are the most affected by corruption. The sampling population comprised of 40 Public Procurement Officers drawn from 20 PEs; 10 politicians who are both in Government and Opposition from within and outside Parliament; and a total of 15 contractors and suppliers.

Target Group	Sampling Technique	Number
Public Procurement Officers	Purposive sampling	40
Politicians	Purposive Sampling	10
Suppliers/contractors	Purposive Sampling	15

**Table 3.1 Sampling Frame**

### **3.7 Data Collection Procedures**

#### **3.7.1 Quantitative Survey**

In phase one the questionnaire was given to four randomly selected individuals from selected Ministries, Department and Agencies (MDA's) of Government. This represented 10 percent of the sample population from MDAs with request for feedback on the comprehensibility and structuring of the survey question. The aim was to conduct a pilot study of the survey in order to ensure identification, deletion or notification of potentially confusing, offensive, leading or loaded question from the survey instrument. Thereafter the questionnaire was then distributed to the selected 20 Procuring Entities for comprehensive response.

The questionnaire was composed of questions based on the following predesigned groupings as follows: Values and beliefs; team environment and responsibilities; communication and

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relations; resources management; skills and learning; rewards and recognition; policies, guidelines and procedures; and monitoring and managing change. The questionnaire was provided space at the end for comments if any from the participants as a tool to gain semi-structured qualitative responses. The survey used the Likert Scale using a number between “1” and “5” where 1 meant ‘strongly disagree’ and “5” meant “strongly agree”. “3” meant neutral. The last section of the survey instrument contained two demographic questions that sought to establish, gender and age. Table 3.2 below depicts the frame of data analysis.

Research Question	Variables analyzed	Analytical technique
What are the influencing factors that directly or indirectly affect implementation of current public procurement existing policy in the Malawian context?	Legislative and regulatory framework	Likert scale
How do these factors affect public procurement policy implementation and why do they exist?	Legislative and regulatory framework	Likert Scale
Do all procuring entities understand, adhere to or use the provisions of the procurement legislative and regulatory framework that is in place?	Legislative and regulatory framework	Likert Scale
Do lack of institutional framework and management capacity render public procurement systems vulnerable to corrupt practices?	Institutional Framework and Management Capacity	Likert scale
How does lack of professional capacity in procurement operations and market practices contribute to corruption issues?	Procurement operations and market practices	Likert scale
Is the public procurement system transparent enough to promote integrity of those managing it?	Integrity and transparency of the procurement system	Likert scale
Is there any political interference in public procurement management?	Political interference	Likert scale

**Table 3.2 Frame of data analysis**

The survey was conducted at a workshop conducted by Malawi Institute of Procurement and Supply for Public Sector Procurement experts. The survey instruments were served personally to participants.

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### **3.7.2 Documents Review**

The researcher collected, summarized, and analyzed the relevant document for this research namely: Public Procurement Act (2003), Public Procurement Regulations (2004), Public Procurement Regulations (2004), public procurement audit reports, country procurement assessment reports (CPAR) by donor agencies and any relevant documents pertaining to public procurement policy. All were collected and assessed to determine state practice and procurement policy development and implementation in Malawi. The researcher concentrated more on qualitative content while being mindful of any quantitative trends that may arise during the analysis.

ODPP has generated a lot of documents which are both legal and technical in nature. A desk review of these documents in addition to documents generated outside ODPP also informed findings of this research. The documents reviewed included the Public Procurement Act (2003), Public Procurement Regulations (2004), Public Procurement Desk Instructions; Various Procurement Audit Reports; Corrupt Practices Act; National Construction Industry Council Act; financing instruments of selected projects funded by donors.

### **3.7.3 Interviews**

Both structured and semi-structured interview types were used as the method of interview for this research. The interviews were undertaken with both procurement entities and suppliers. The inclusion of suppliers was particularly considered as it takes two to tangle.

### **3.7.4 Participant Observation**

Participant observation also played an important role in this research. This method allowed the researcher to observe the day-to-day activities of the population the researcher set out to study. This was chosen because participant observation is seen as a process in which a researcher establishes relationships with the individuals and groups in their natural setting and may lead the researcher to abandon preconceptions that may have been 'hypothesized' by depending on documentary research alone (Mack & Woodsong, 2005 as cited by EL-Gayed, 2013).

## **3.8 Validity and Reliability**

This research tested both validity and reliability parameters by relying on generally acceptable three methodologies of studying corrupt practices namely: general perception methodology, incidence based methodology and the transparency international expert evaluation methodology. All the three methods hold value in achieving the goal of estimating the spread and map of corruption. The first relies on the media coverage of corruption which going by this measure procurement corruption in Malawi was found to be entrenched as all media reports carry headlines related to alleged or actual corrupt practices in the award of tenders in the country. The second methodology depends on asking the ones who potentially bribe and those whom bribes are offered and use of this approach was recommended as the researcher was likely to get a good feedback on how frequent corruption was in different transactions. The third is where the researcher relied on data collected by experts such as Transparency International which is usually expressed on some scale reflecting the perception of respondents with most corruption indicators not about the actual level of corruption, but about perceived corruption.

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### **3.9 Conducting the Main Case Study**

The main case study was conducted during period September/October 2015. A total number of 32 interviews were conducted during that period. Four interviews were conducted at ODPP in Lilongwe, Malawi. Two were carried out at Ministry of Health, four at Central Medical Stores Trust, two at Kamuzu Central Hospital in Lilongwe, one at Mchinji District Hospital, two at Queen Elizabeth Central Hospital in Blantyre, five at Ministry of Agriculture in Lilongwe. Two interviews were carried out at Ministry of Transport and Public Works headquarters, three at Roads Authority and one at Road Fund Administration. The researcher also attended two workshops and one annual conference organized by MIPS and one AfDB funded Project Performance Review workshop. Two interviews were conducted at the Ministry of Education in Lilongwe. One interview was carried out with the Procurement Specialist of the World Bank Country Office and another with the Chief Executive of MIPS.

### **3.10 Data Analysis**

#### **3.10.1 Quantitative analysis**

The quantitative data was analyzed using excel spread sheet. Comments that were received from participants in the survey instruments were considered as semi-structured qualitative data. This data was assigned concepts in order to effectively find associations/relationship on the dependent variable investigated. The open coded data were then assigned themes as procurement emerging themes.

#### **3.10.2 Documentary Analysis**

Various procurement audit reports were assigned codes based on the concept discovered. This is in line with the theory of labelling phenomena as they are discovered. The concepts were then constantly compared with other concepts which were coded. This review process is what is called 'constant comparison' and is associated with the 'grounded theory' analysis method (Page & Meyer, 2000). These concepts were then categorized into emerging subthemes. The task was to examine and identify the cause and consequence of contextual occurrence. By examining these factors it was possible to link data from interviews with suppliers and contractors to the survey instrument used in this study.

#### **3.10.3 Interviews**

Some qualitative data was analyzed using a computerized excel sheet tool while most other qualitative data used descriptive analysis that led in reducing the data to major factors.

### **3.11 Chapter Summary**

This chapter has outlined the methodology used in collection of information for analysis. Desk review of documents, administration of questionnaire and interviews have therefore been employed. The chapter also clarifies the hypothesis to be tested. Chapter 4 reports on findings resulting from application of methodology in this chapter.

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## CHAPTER FOUR

### RESEARCH FINDINGS AND DATA ANALYSIS

#### **4.0 Introduction**

In this chapter the findings of the study are presented. Both quantitative and qualitative techniques were used. Descriptive and inferential analysis were performed using Excel Spread Sheet for both quantitative and qualitative analyses. Firstly the general demographic information regarding the participants is presented. This data is analyzed on the basis of two demographic variables namely age and gender. Secondly a summary measure of the dependent variable of corruption of the selected Procuring Entities representing the general picture. In total 31 items are categorized under 8 pods based on the literature review. Thirdly inferential analysis is based on cross tabulation of 2 demographic variables with the 31 variables and presented on participation format. Fourthly documentary analysis is quantitatively analyzed. The data was provided by the participating entities based on interviews undertaken and records kept. Fifthly the responses to open ended comments were treated as semi-structured replies and quantitatively analyzed based on emerging themes. Sixth the responses of the interviews participants was

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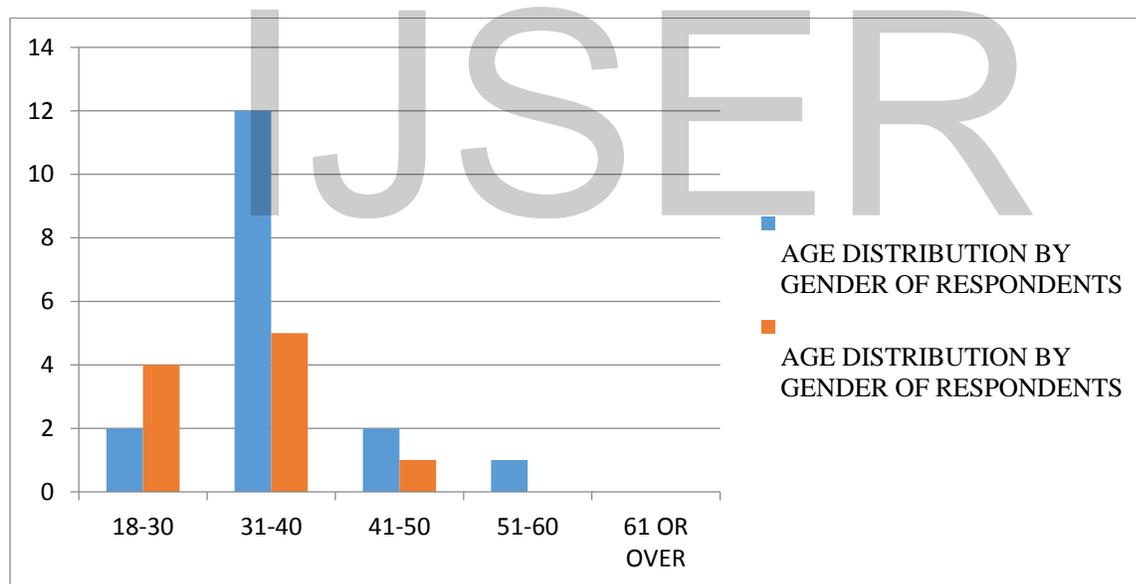
analyzed and thematic analysis based on emerging major themes, sub-themes, frequency and snapshot of the response is presented separately on PEs basis. Lastly the results of inferential analysis are highlighted.

#### **4.1. Response level, Data Collection and analysis**

##### **4.1.1 Demographic Data, Age and Gender**

The survey questionnaire was sent to 40 eligible public procurement practitioners from the selected procuring entities (PEs). The survey was open from 1<sup>st</sup> August to 31<sup>st</sup> August for completion by the target group. A total of 35 respondents were received by the closing date. This represented a participation rate of 88 percent to the survey instrument.

The trend of participants in general in terms of age indicates that majority of respondents are in the younger age group with 22 percent between 18 to 30 years and 63 percent between 31 and 40 years of age. In contrast only 11 percent were in a group between 41 and 50 years of age and 4 percent between 51 and 60 years age group. Overall 85 percent of respondents were below 40 years of age, reflecting younger public procurement staff population.



**Figure 4:1 Distribution by Age and Gender**

The purpose of this study was to establish the relationship between public procurement in terms of supplier induced corruption; public official induced corruption; and politically induced corruption and public procurement practices in the public sector. The analysis were conducted based on the information derived from a wide range of stakeholders to Malawi's public procurement system. The stakeholders were broadly categorized as follows:

#### **1. ODPP**

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2. ACB
3. Public Procuring Entities
4. Parastatal organisations
5. Suppliers/contractors
6. Training institutions
7. Other NGOs
8. Development Partners

The stakeholders included in the research were selected based on the criterion of relevance. In this way the research sought to cover all major stakeholders working directly with the public procurement system or linking to it, such as institutions working in the field of public financial management, audit and anti-corruption. The procuring entities selected to participate in the research were chosen based on the volume of their procurement in terms of value thereby giving priority to the major spenders of public money. While this sampling strategy does not provide for generalization across all procuring entities, it guarantees that light is shed on those issues in the procurement system likely to have the largest financial impact on public expenditure. As previous studies have pointed to the distinctive issues associated with procuring entities at local government level the researcher included a small sample of District Councils in order to be able to also address the peculiar issues characterizing these institutions in the procurement anti-corruption strategy. For similar reasons the Central Government Stores Trust was also included in the sample.

The research was primarily based on qualitative interviews with stakeholders described above. In addition to the interviews carried out, a number of written documents were also consulted. These included previous studies in relevant areas; legal, policy and strategy documents related to procurement; documentation derived from ODPP procurement monitoring activities; procurement audit reports available statistics; inter alia. Prior to actual data collection the researcher developed a data collection strategy, according to which all data sources to be consulted were identified for each indicator. The full list of data sources that were consulted for each indicator served as a checklist throughout the data collection and the analysis ensuring that most if not all stakeholders were interviewed, and that all available data was incorporated in the analysis and recommendations.

Based on the data collection strategy, an interview guide for procuring entities was developed covering all the areas deemed relevant according to the data collection strategy. Similarly the data collection strategy was used as a reference document during interviews with the other stakeholders interviewed. In the same vein during the indicator by indicator data analysis, the data collection strategy document was used as a checklist, thereby guaranteeing that the data collected from the various sources did in fact feed into the final analysis and formed the basis for the final scoring.

Of the 40 formal structured questionnaire that was administered a total of 35 completed questionnaires were responded to and received by the researcher representing 88 percent response rate and were used in the analysis. Where technical issues were raised explanation had

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to be given to some respondents. The questionnaire was divided into eight (8) pods with each title containing between three to five issues to be responded to which in total were 31. The eight pods had the following themes: values and beliefs; team environment and responsibilities; communication and relations; resource management; skills and knowledge learning rewards and recognition; policies guidelines and procedures; and monitoring and evaluation. On the desk studies and interviews with key stakeholders, the researcher used the four pillar prescribed by OECD/DAC Methodology Assessment for Procurement System (MAPS) namely: Legislative and regulatory framework; Institutional framework and management capacity; procurement operations and market practices; and Integrity and transparency.

#### **4.2 Key finding and analysis of the assessment**

##### **4.2.1 Response to survey questionnaire**

The mean and standard deviation of responses by participants to the 31 questions have been grouped into 8 explanatory variables.

##### **4.2.2 Mean value and standard deviation**

Ser. No.	Theme	Question	Mean Values	Standard Deviation
1	Values and Beliefs	Expected standards of values, ethics are clearly communicated	4.11	
		Government demonstrates a commitment to hiring the most competent people available.	2.28	
		Staff in Government are treated equally	1.58	
		People in leadership positions set good examples	1.48	
			<b>2.36</b>	<b>1.22</b>
2	Team Environment and Responsibilities	My Ministry constantly seeks ways to do better job	3.56	
		My role and responsibilities are clearly understood by colleagues	3.04	
		I am empowered to carry out my job responsibilities.	4,11	
		Staff are held accountable for resources and activities that they manage.	3.92	
		I feel accountable for upholding Government's policies and procedures.	4.00	
			<b>3.73</b>	<b>0.44</b>
3	Communications and relations	I trust my fellow members of IPC Team.	4.36	
		There is smooth communication between	3.84	

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		procurement entities and Office of Director of Public Procurement. There is smooth interaction between ODPP and ACB.	2.73	
		Politicians do not interfere in decision making for contracts award	1.91	
		There is close relationship between my office and suppliers/contractors	4.13	
			<b>3.39</b>	<b>1.04</b>
4	Resource Management	Our procurement plan stipulates threshold for each procurement method	3.68	
		Open tendering is the most used/preferred method of procurement by our entity.	3.34	
		Allocated resources are spent for its intended purpose.	2.79	
		Procurement office in our entity continue functioning well even when key staff is absent.	2,78	
		Our procuring entity has sufficient staff in both numbers and technical ability to meet Government's needs.	2.48	
			<b>3.02</b>	<b>0.48</b>
5	Skills Knowledge and learning	All newly hired staff undergo orientation I have adequate professional skills in procurement to do my job.	2.90 3.03	
		Consultants are used when the desired skills and qualifications are not available from existing staff.	3.16	
			<b>3.03</b>	<b>0.13</b>
6	Rewards and Recognition	I receive adequate compensation I feel that my work is valued by the Government. I receive adequate recognition for my performance. Where not adequately compensated I get commissions from suppliers/contractors.	1.78 2.19 2.42 1.53	
			<b>1.98</b>	<b>0.40</b>
7	Policies and	Government procurement policies and	2.25	

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	Procedures	procedures are adequate to ensure that corruption risks are effectively controlled Our procuring entity adheres to Government's procurement law and regulations guidelines and procedures in a consistent manner. The Government's policies on procurement are well documented and understood When in a hurry some procedures are bypassed.	3.00 3.31 2.94	
		The decision making process is clear.	2.44	
			<b>2.79</b>	<b>0.43</b>
8	Monitoring and Evaluation	Corrupt officials are reported and punished	2.48	
		Corrupt contractors and suppliers are reported and punished.	2.76	
		My entity does a good job of analyzing contractual performance by suppliers/contractors My entity regularly analyses the market to take advantage of prevailing trends 90 percent of reported corruption cases are related to procurement	3.15 3.13 2.00	
			<b>2.70</b>	<b>0.48</b>

**Table 4.1 Mean Average and Standard Deviation for all the eight Pods**

**4.2.2 Interpretation of table 4.1:- Mean Values and Standard Deviation of the Eight Pods**

Table 4.1 presents the mean values and standard deviation of responses of all the eight pods. When computing both the mean values as well as the Standard Deviation (SD) the researcher took cognizant of the fact that mean values alone do not tell the whole story. Therefore this research considered it important to also consider distribution of responses to which SD provides a valuable descriptive measure to this. According to Data Star, 2013 the standard deviation describes the distribution in relation to the mean. Thus SD provides an indication of how far the individual responses to question vary or deviate from the mean. SD was tabulated to inform the researcher how spread out the responses were in terms of whether they are concentrated around the mean or scattered far and wide. Whether all responses were middle of the scale or some strongly agreed and others strongly disagreed.

In summary it was shown that all pods had an SD of less than 1 meaning that all did not have problems with the values of the pods and could have rated the attributes a 5 (strongly agree).

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The higher value of SD for pods 1 and 3 could indicate that responses were polarized where most respondents strongly agreed and rated the attribute a 5 however a smaller but important segment of respondents had problems with the two pods and rated the attributes therein a 1 (strongly disagree). The following sections discuss the results in terms of percentages of respondents per each attribute in turn.

#### **4.2.3 Percentage Representation of Results Per Pod**

Pod number one had four questions which were responded to. On average 39 percent of the respondents agreed that expected standards of Values and Beliefs were available in their respective entities and another 39 percent did not agree. This pod witnessed an increase in the number of those who neither agree nor disagree (neutral) with the availability. As expected 89 percent of the respondent agreed that expected procurement standards of values and ethics were communicated to them. On the other hand as regards the question of whether Government demonstrates commitment to hiring the most competent people available only 40 percent agreed. Further it was discovered that only 14 percent of the respondents from the public sector procurement think that they are being treated equally. A large number of them did not agree or remained neutral. This was rather due to lack of confidence in the leadership as only 11 percent of the respondent think that people in Leadership position in Government set good example.

The second pod was meant to address the question of team environment and responsibilities. Five parameters were set aside to test the existence of this variable namely whether the MDA seek ways to doing a good job; whether their procurement roles and responsibilities are well understood by colleagues within the entity; whether contractors/suppliers performances are analyzed; whether procurement staff are held accountable for resources that they manage and; whether procurement staff feel accountable for upholding Government procurement policies, guidelines and procedures. Here the results were very interesting as 74 percent agreed that there was presence of team environment and responsibilities in the entities. This pod received a quite a large number of positive response. Out of the sample 57 percent attribute their success to their entities' efforts to constantly seek ways of to do better; 46 percent believe that they are held accountable for resources and activations under their charge; 71 percent feel empowered while 57 percent feel accountable for Government policies and procedures.

Knowing very well how important communication and relations with suppliers, other departments and within the office in promotion of best practices in procurement and how such best practices can assist in curbing corruption is, pod 3 asked the respondents to give their opinion in this area in their set up. To assist them come up with focused responses they were made to respond to five parameters namely: whether they trust fellow members of their Internal Procurement Committees (IPC); their opinion on whether their procuring entities do communicate smoothly with the authority responsible for regulating procurement issues in public sector i.e. the Office of the Director of Public Procurement (ODPP); also whether the ODPP do communicate smoothly with the Anti-corruption Bureau when dealing with corruption related issues in public procurement; also knowing very well that the culprit in most corruption cases is mainly the politician, respondents were asked if they get interference from politicians when making decisions for contract award; since in procurement there cannot be any corruption

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without suppliers, the respondents were asked on how close they are with their suppliers/contractors.

In a nutshell the findings depict an average of 52 percent of respondents agreeing that there is positive communication and relationships in all Government procurement offices in Malawi. The results saw 60 percent agreeing that for purposes of curbing corruption in public procurement ODPP and ACB are constantly in touch; 57 percent of the respondents believe that their entity do communicate smoothly with the procurement regulatory authority (ODPP) to ensure that issues of mis-procurement and corruption in public procurement are prevented before they bear themselves on meager resources of the Government. Only 17 percent of the respondents on their relationship with suppliers attested that they do enjoy a good partnership. There is also substantial amount of trust within the Internal Procurement Committees with 60 percent of the respondents confirming this. This is very good for the smooth operation of procurement activities; however, an interesting result came about on the level of interference by the politicians. Only 17 percent agreed with the question that politicians do not interfere with decision making for contracts award. This confirmed the intervening variable of political interference as it means over 83 percent of the respondents feel that politicians are interfering with public procurement decision making process. This is an interesting finding because it may have negative impact in the smooth operations of public procurement, leading to corrupt decision prevailing over the objective ones.

Under pod 4 respondents were asked to share with the researcher on how they manage public resources put under their charge by the Government. Specifically they were asked to comment on whether procurement plans of their entity requirements do stipulate in advance the procurement method that would be used. Their undertaking was also sought on the most preferred or most used method of procurement by their entity to see if it is open tendering. Procurement being the highest spender of Government resources accounting for over 75% of the recurrent and capital expenditure, a question was also asked if resources allocated is spent for its intended purpose. Procurement office needs to be operating smoothly all the time. In this regard the researcher tried to find out if (procurement) office in their entity continues to function well even when key staff is absent. Last but not least issue of staff numbers in the procurement offices of the sampled ministries/public entities was also assessed. A question on whether the procuring entity thought they had sufficient staff in both numbers and technical ability to meet Government's needs was posed:

Overall 71 percent of the respondents agreed with the researcher's assumptions. Specifically the respondents acknowledged that open tendering is the most used and preferred method of procurement by their respective entities mainly because it is a requirement by laws governing procurement in Malawi. 66 percent of the respondents confirmed this. Since planning is the first step towards a smooth operational transaction also 66 percent of the respondents indicated that value threshold for each procurement method is prearranged in the procurement plan. It was however interesting to note that only 60 percent agreed that resources allocated are spent for their intended purpose. This was found not to be good enough as over 40 percent can attest to the fact that Government resources can be diverted to serve other objectives. Procurement office

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in entities does not function well when key staff is absent. This is indicated by only 49 percent who agreed that their offices continue operating normally even in the absence of key staff. This is an area of interest because some corrupt officials may take advantage of the absence of key staff in order to flout procedures. Lastly also only 42 percent of the respondents believe that their procuring entities had sufficient staff in both numbers and technical ability to meet Government's needs. This is also an area of concern bearing in mind that if procurement tasks are handled by incompetent people it can be a disaster because the make shift staffing arrangement may not have ownership of the tasks. Furthermore if the numbers are not adequate the few available may be overwhelmed thereby leading to some tasks not being paid the attention they deserve. Consequently corrupt transactions could slip through.

Another important pod where professionalism of procurement practitioners was tested is the one under skills, knowledge and learning. It is a proven fact that best practice breeds ethics at work. The underlining fact remains that skilled people are highly motivated. Those with knowledge perform professionally in all what they do and are difficult to corrupt. The respondents were therefore asked if all newly hired procurement staff undergo orientation in their entity. Also their professionalism was put to question where the researcher tried to find out if the respondents had adequate professional skills in procurement to do their job. Lastly the researcher tried to find out if consultants are used at all. If so I asked if they are used only when the desired skills and qualifications are not available from existing staff. On average 61 percent of the respondents confirmed that they possess the necessary skills and knowledge to perform public procurement tasks. Fifty-seven percent of the respondents indicated that they have adequate professional skills to do their job. This means there is 43 percent gap to be filled with professional training to meet the requirements. Fifty-seven percent also agreed with the researcher that consultants are indeed used only where the desired skills and qualifications are not available from existing staff. It was however interesting to note that only 49 percent agreed that they underwent some sort of orientation when they were hired for the first time. This is an area for improvement because one cannot expect communication of policies and procedures to be done effectively if large number of newly employed staff is not oriented. This, if not checked could be a breeding ground for corruption.

The pod for rewards and recognition was also a very interesting pod with only 32 percent on average accepting that they are adequately rewarded and recognized. The parameters which were used to come up with such a result included a question as to whether they receive adequate compensation. The researcher also tried to find out if they feel that their work as procurement specialists was valued by the Government. Issues of performance were not left out. It was the Researcher's strongest conviction that recognition for performance can also help curb corruption. Therefore a question as to whether they receive adequate recognition for their performance was posed. The Researcher also tried to hear from them if they regard as a norm receiving commissions from suppliers/contractors to cover where they are not adequately compensated.

The following are the results of this research. Only 26 percent felt they were adequately compensated leaving over 74 percent disgruntled about the adequacy of compensation that they receive. This is a dangerous scenario because if not properly managed this category may resort

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to corrupt means to meet their needs. Another area of concern is the 43 percent who are the only ones from this sample who feel that their efforts are being recognized. This is very dangerous because there is the whole bunch of 57 percent whose efforts, the Government is not recognizing. This category can also be a breeding ground for corruption. Further to this, it was also discovered that also only 43 percent feel that the Government value the work that they do. Also this is another area of concern since over 57 percent have their contribution towards running of the Government business in procurement of goods works and service not being recognized. Nine percent of the respondents admitted that they do seek commissions from suppliers/contractors to cover up where they feel that they are not adequately being compensated. This is a serious revelation because even those who did not openly say that they demand commissions, may be doing so secretly. This means the prices that suppliers quote include such commissions thereby rendering the Government vulnerable to corrupt practices consequently making the country to lag behind in infrastructure development.

Government policies, guidelines and procedures if followed to the letter and spirit can aid anti-corruption initiatives. Procurement policies, guidelines and procedures have also proved to be the effective tools in curbing malpractices in public procurement. It was pleasing to note that an average of 55 percent of respondents do, appreciate the importance of policies and how they are impacting on their day to day work. Five parameters were considered in this pod namely: whether Government procurement policies and procedures are adequate to ensure that corruption risks are effectively controlled; Whether their procuring entity adheres to Government's procurement law and regulations guidelines and procedures in a consistent manner; Whether the Government's policies on procurement are well documented and understood; Whether when in a hurry some procedures are allowed to be bypassed. Lastly their opinion on whether the procurement decision making process is clear. The following results emerged from the sample. 46 percent agreed that the decision process for procurement is clear. This is not good indicator. Only 43 percent agreed that Government policies do adequately cover risks and provide controls. This also is not good enough to curb corruption. Fifty-seven percent affirmed their commitment to adhering to public procurement policies as issued by the procurement regulatory authority from time to time. 63 percent agreed that the policies and procedures are well documented, understood and available for use by the entities. Over 51 percent revealed that they at times bypass the rules especially when in a hurry despite knowing that the law does not allow that. This is an area of concern because where as much as 51percent of the officials bypass laws they may do that for personal gain.

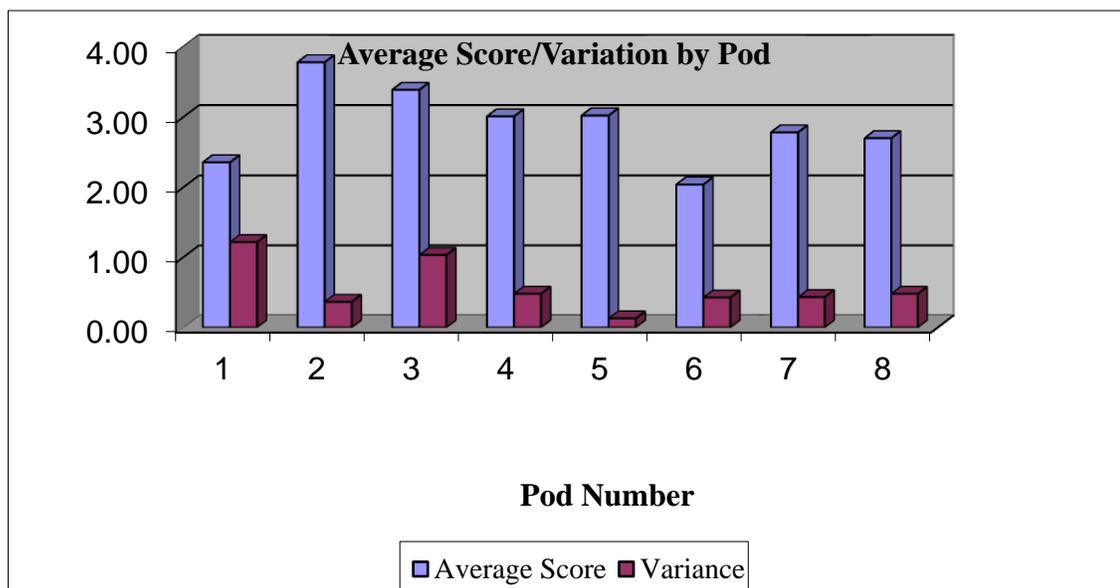
Monitoring and evaluation is another key feature in any management or programming quality. It was surprising to note that on average only 55 percent of the total respondents agreed that there is some monitoring activities taking place to track down perpetrators of corruption in public procurement and promote best practice. Just like some pods this one also had five areas to be responded to namely: whether corrupt officials are reported and punished; whether corrupt contractors and suppliers are reported and punished; whether their entity do analyze contractual performance by suppliers; whether their entity analyze the market to take advantage of prevailing market prices and; whether indeed they agree that 90 percent of reported corruption cases are related to procurement. The following are the results: 33 percent of the respondents agreed with

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the hypothesis that 90 percent of all reported corruption cases in Malawi are related to procurement. However despite the gloomy picture painted by this revelation 72 percent of the respondents think that their entities do a good job of analyzing contractual performance by suppliers and contractors in order to fish out and blacklist the non-performers. Only 55 percent at least know that corrupt officials are reported and punished. This means that there is a perception by over 45 percent who believe that corruption is taking place unreported. One of the functions of procurement is to constantly analyze the market in order to take advantage of prevailing price trends for the betterment of the Government. It was however not encouraging to note that only 64 percent of the respondents do undertake such exercises. This means the Government is not getting value for money despite some favorable market indicators, mainly because of 44 percent who are not doing it for one reason or the other. No wonder only 48 percent know that corrupt contractors and suppliers are reported and punished. If contractors and suppliers who are corrupt go scot-free one wonders whether the battle against corruption mainly in public procurement could be won.

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**4.2.3 Graphic Representation of a Summary of Roll-Up Averages**



### **Figure 4.2 Depicts average scores and variance for all the Eight Pods**

From the **figure 4.2 above**, lack of values and Monitoring mechanisms are posing a serious threat towards achieving a corrupt free public procurement. While expected standards of values and ethics have been clearly communicated to all procurement practitioners involved in public procurement, there is need for Government to demonstrate commitment to hiring the most competent people available. Furthermore issues of equal opportunity in the way staff are being treated must be paid attention and above all people in leadership positions in Government must set good example. Another area that scored less and requires attention is the issue of resource management. Much as procurement plans stipulates value threshold for various procurement methods and that open tendering is the most used and preferred procurement method, a lot of effort needs to be put to ensuring that resources are not diverted but are used for their intended purpose. Staffing issues need to be attended to so that not only should procuring entities have sufficient staff in both numbers and technical ability to meet Government's needs but also that procurement office in all entities must continue functioning well, even when key staff is absent.

Issues of rewards and recognition are very sensitive such that if not handled properly might degenerate into source of corruption as indicated by some traits of officers who despite being paid their remuneration resort to demanding commissions from prospective suppliers. Most officers feel they are not adequately compensated in addition to the general feeling that Government seem not to value the work they do. It is also imperative that Government must recognize value adding performance being displayed by procurement officials. Action speaks louder than words. Monitoring and evaluation issues guarantee management and programming quality. It is a mockery to put in place very good anti-corruption strategies when actions by corrupt officials, suppliers and contractors are not reported and punished. Those who handle procurement issues must be on top of issues by ensuring that they analyze contractual performance of suppliers and those seen as perpetrators of corruption are black-listed.

Having presented these findings based on responses from individual officers, the gaps identified therein do culminate into a serious capacity issue at institutional level. I now turn to the findings of interviews and studies of previous reports as regard the general capacity gaps in the public procurement system (PPS).

#### **4.2.2 Desk Studies and interviews with stakeholders using OECD/DAC Methodology for Assessment of Procurement Systems (MAPS)**

Interviews were conducted in a semi-structured approach. Four OECD/DAC Pillars for procurement system assessment was used. Pillar 1: Legislative and Regulatory Framework; Pillar II: Institutional Framework and Management Capacity; Pillar III: Procurement Operations and Market Practices; Pillar IV: Integrity and Transparency of the Public Procurement System. The following paragraphs will present the Researcher's findings on each pillar in turn.

##### **Pillar I: - Legislative and Regulatory Framework;**

The Malawi Public Procurement is governed by the Public Procurement Act of June 2003 along with Public Procurement Regulations of September 2004 and further deliberated in the Desk Instructions for Public Procurement issued by the Office of Director of Public Procurement

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(ODPP). Together with circulars issued by the ODPP, this body of norms constitutes the legal framework for all public procurement in Malawi. The legal and regulatory framework provides a sound legal framework for efficient public procurement in Malawi. The Act and Regulations adequately establish the institutional framework required to support public procurement, the stages of the procurement process, the main methods of procurement and conditions for use and the conditions for review and auditing. Moreover, the Desk Instructions serve as a manual for procuring entities providing easy and simplified explanations and guidance. Finally a comprehensive set of Standard Bidding Documents (SBDs) for a wider range of goods, works and services has been issued to assist the procurement process in the procuring entities. The legal and regulatory framework is in place and it represents a key asset in the development of sound and efficient procurement. Procuring entities have come a long way in establishing the required procurement set up and adapting their practices to the new framework. The awareness of the legal framework is increasing day by day, leading to increasing use of the standard bidding documents. The PPA is however undergoing amendment to include issues of disposal of public assets in the wake of how the Government Jet was disposed-off without following any due process and procedure. The amended Act would also seeks to establish ODPP as an independent authority. At the time of compiling this research Malawi Parliament had just passed a Malawi Institute of Procurement Bill which seeks to make it mandatory for every procurement practitioner to belong and register with MIPS for purposes of regulating and disciplining of wrong doers in every sector of the economy.

Despite these overall encouraging trends there is generally lack of compliance to the legal framework by procuring entities. The research found out that fewer procuring entities use SBDs, mainly due to poor understanding among procuring entities of SBDs issued leading to some procuring entities using wrong set of SBDs for their procurements. It was also noted that many procuring entities are reluctant to replace request for quotations process with more demanding tendering process. This was also confirmed during the survey results analysis. Other procuring entities do not even have a copy of the Regulations and Desk Instructions and others even confessed that quality of technical specification is often poor. In some cases it was found that evaluation criteria are often poorly specified, awareness of procedures for review is very limited and more so many procuring entities have experienced political interference in the procurement process. Political interference mainly happens more during political campaign as parties mainly those ruling wish to raise money for campaign through corrupt means and procurement system become the main culprit.

## **Pillar II: Institutional Framework and Management Capacity**

This pillar basically assesses how the procurement system as defined by the legal and regulatory framework in Malawi was operating through the institutions and management systems and practices forming part of the overall public sector governance. The Research found that the PPA established the ODPP as the regulatory body responsible for the administration of the Act, placed directly under the general supervision of the President. The Act further sets out the functions of the ODPP, which include dissemination of the Act and regulations, development of standardized documents from procurement, promotion of a professional procurement workforce, data

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collection and monitoring at procuring entity level, administration of bid protests inter alia. The ODPP in short is a key driver towards the development of an efficient procurement system.

The researcher however found that there is inadequate capacity at ODPP to carry out its oversight functions constrained by lack of qualified staff. This has made other procuring entities to take advantage of the gap and indulge in unscrupulous behavior including corrupt practices. Some Development Partners such as the World Bank have observed that the dual function of providing oversight role while at the same time they conduct prior review of bids is tantamount to conflict of interest. The researcher also noted that there is a gap in procurement information flow from PEs. The information is not real time and purchase orders for payment were being generated by accounting personnel. This has been a breeding ground for fraud as purchase orders could be generated and payment made for a transaction that has not been initiated by procurement to the extent that payment was made for goods not delivered.

**Pillar III: Procurement operations and market practices**

This Pillar concentrates on how procurement institutional systems operate at the level of procuring entities and as well as on the procurement market. The review and interviews revealed a number of positive factors that are being done to strengthen procurement operations and market practices. The researcher noted that procurement in Malawi is decentralized to procuring entities. Steps are underway to establish a professional procurement workforce through the creation of Malawi Institute of Procurement and Supply. Despite these developments it was noted that in most procuring entities procurement officers have inadequate procurement proficiency which is an area of general concern as clever politicians tend to use such officers to defraud Government. The training and information provided is not consistent with demand; most procurement officers who were consulted bemoaned lack of career path with inactive public procurement common service. There is a lot of attrition of staff in public sector in general and in procurement in particular because of shortage of qualified procurement staff the few of who are demanded by other sectors of the economy such as the private sector and non-governmental organizations. The procurement training supply available for the private sector is very limited. It was also noted that the systemic capacity constraints inhibit small bidders' access to the procurement market making them to bribe their way through in order to be favored during contract award. It was noted that this is one of the causes of supplier induced corruption. Due these capacity constraints on both sides of the supply chain, contracts are not monitored for performance making rendering its execution difficult. This was observed as being one of the breeding ground for corruption.

**Pillar IV: Integrity and transparency of the public procurement system**

The integrity and transparency of a public procurement system relies on a number of control mechanisms that includes an effective control and audit system, an efficient appeals mechanism, a comprehensive information sharing system enabling civil society and interested stakeholders to conduct social audit, an effective ethics and anti-corruption measures. Without such control mechanisms, flaws in the procurement system may not be detected and addressed. The fourth Pillar of the assessment therefore measured the existence of adequate control system and the practices related to it. The review also noted the existence of a sound legal framework for

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addressing corruption, fraud, conflict of interest and unethical behavior. Despite these positive developments the researcher noted lack of procurement audit proficiency on the part of the Auditor General's office. Furthermore it was established that PEs noted that although external audits are conducted on regular basis this is done superficially and terrible e.g. by only checking payment voucher and often does not cover procurement functioning broader terms. Some smaller procuring entities also report only to be audited if specific data from files is required in relation to other audits such as the recent forensic audit. Weak enforcement audit recommendations which was indeed to be the case when the researcher perused through the results of few sampled procurement audits. It was also established that there is weak enforcement of the legal provisions on corrupt practices. The ACB collects statistics on the number of reports of cases of corruption received, number of cases authorized and not authorized, number of cases awaiting action, number of convictions and number of acquittals. While little data exist for corruption of detected in the field of procurement only the aggregated data from ACB suggests a rather weak enforcement of the legal frame work. It was found that the cash-gate cases that have been successfully prosecuted have mainly relied on Anti Money Laundering piece of legislation. The researcher found that this piece of legislation came timely otherwise the all cash-gate cases would have been difficult to conclude. The researcher through interviews and desk studies also found that the mechanism that is in place for reporting corruption cases does not guarantee confidentiality and reporting is therefore limited.

#### **4.2.3: Desk studies using procurement audit reports**

Procurement Audits if taken seriously offer an opportunity to prevent fiduciary risk and recommendations thereof can become vehicles of change for the better. In the Malawi context however the situation seems to be different. Despite several procurement audits called upon by both Government and Donor Agencies the country continue to experience procurement related problems.

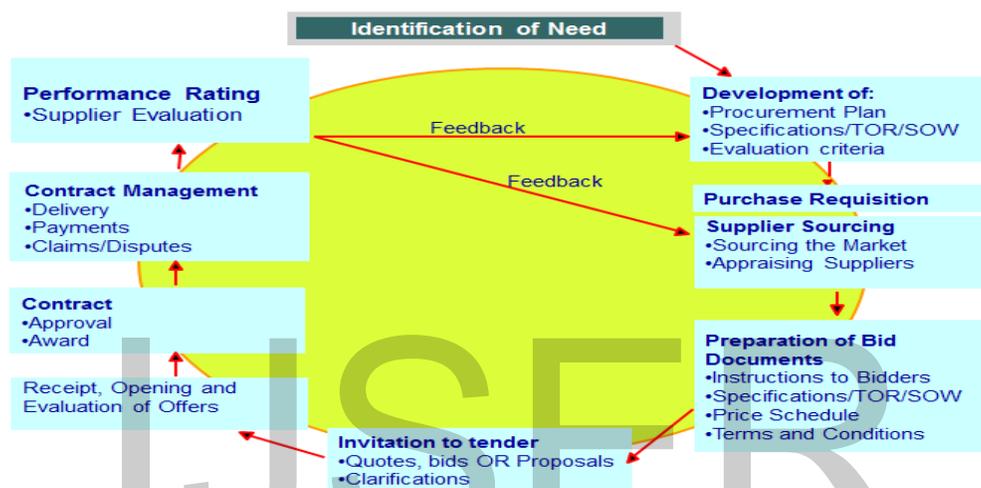
For example the researcher found that latest audit reveals that levels of non-compliance stands at 50 percent. It is Government policy that national budget be linked to procurement plans such that an entity that does not produce procurement plan should not access funding from the national purse. (Malawi Government PfEM indicator no. 9, 2009). Despite such important policy the researcher found that the country still witness payments being made to suppliers without contracts let alone evidence of receipt of supplies and services. What it means therefore is that in Malawi's public sector it is possible to procure anything even if it is not in procurement plan. (Baker Tilly (2014).

The researcher also found out that all audit reports sampled found that procurement records are not kept in systematic manner if at all. It goes without saying that for any meaningful procurement audit to be undertaken there must be documents available with sound audit trail. Availability of documents alone may not be adequate if they are of poor quality. At most all audits in Malawi public sector finds that there are a lot of poor quality procurement documents, if at all. There has been instances where procurement process is done without regard to use of standard bidding document despite the country's law, making it mandatory so to do. Filing of

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documents is done in haphazard manner that makes it difficult for any meaningful retrieval to be done efficiently.

Procurement audits themselves are taken as routine exercises as such, unlike financial auditing that demands availability of financial statements first to aid the audit, procurement audit on the other hand requires a robust monitoring of the procurement cycle, in order to be effective. The researcher however observed that with problems of filing and poor quality documentation coupled with higher non-compliance levels procurement audit fail to serve the purpose. Figure 4.3. Below provides an over view of the procurement cycle as issued by the ODPP in Malawi.



**Figure 4.3. Procurement Cycle (ODPP Strategic Plan, 2006-2011, p27)**

The researcher found that most audit recommendations are not followed through and all audit findings undertaken recently seem to be predictable for they are always the same with the same management responses. There is a culture of business as usual to the extent that there are no sanctions imposed on perpetrators of non-compliance.

Given how high the level of non-compliance is the researcher wondered as to what is the role of the procurement units (departments). The procurement law makes the establishment of specialized procurement units (SPUs) mandatory. It is however noted that procurement units or departments are not empowered to take charge and full control of procurement in the entity. In terms of professionalization of procurement function it goes without saying that most people doing procurement are neither procurement professionals nor have they been trained in basic procurement principles. The ODPP have tried through their capacity building programs to conduct internal workshops to sensitize mostly members of the Internal Procurement Committees (IPCs) who are mostly not procurement staff, on the tenets of procurement.

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Therefore procurement capacity in procurement units still remains a challenge both in terms of human resources and physical resources. The researcher therefore concluded that the high level of non-compliance to basic principles and processes of public procurement is nothing but aimed at creating a conducive environment for corrupt practices.

**4.3 Conclusion of the chapter**

The chapter has discussed findings and analysis of the research concurrently. The researcher also attempted to answer all research questions raised in the conceptual framework in the introduction section. However conclusion and recommendations are the subject matter of the next chapter.

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## CHAPTER FIVE

### CONCLUSIONS AND RECOMMENDATIONS

#### 5.0 Introduction

The rationale of the study was to explore corrupt practices in public procurement in the Malawi context and analyze independent variables that influences corruption the dependent variable. The results of the research in the context of the rationale which led to the study are discussed in this chapter. One thing in the findings is clear that corruption is rampant in public procurement and is classified in three forms namely:

1. Supplier induced corruption that happens as a result of stringent competition for government contracts
2. Public official induced corruption that mainly take place through creation of bureaucratic hurdles that would necessitate seeking faster service, and
3. Politically motivated corruption where contractors with political connection receive favors for fear of political prosecutions.

For the above and other reasons the researcher preferred to gather responses by way of survey, interviews as well as desk review of documents to assess level of corruption per category as classified above as it was considered important. There were a total of 31 explanatory variables and two demographic variables in the survey instrument. The interview with suppliers and stakeholders were conducted in consultative manner seeking variables considered significant to developing anti-corruption strategies in public procurement. The variables that were identified by the survey, interviews as well as desk document reviews which were deemed to provide a significant contribution to assess factors that influence the main reason why corruption is rampant in public procurement which can generally be applied to private sector as well are discussed in the conclusion below.

#### 5.1 Conclusion

During the interviews with contractors and suppliers of various government works, goods and services at most all respondents mentioned that they pay bribes or kickback of some kind. The reasons ranges from either to influence tendering decisions so that they are awarded contracts or when contracts are signed to ensure that they are paid on time nor at all. This is done with an intention to circumvent stringent public procurement procedures and process as prescribed by the procurement law and other financial management instruments. Thus they regard these rules and procedures as stringent since open tendering is mostly the default procurement method in public sector. It was also apparent that some contractors and suppliers resort to paying bribes and kickbacks because of ignorant. There is generally lack of knowledge of the provisions of the

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public procurement legislative frame work let alone requirements of the bidding process itself which they eventually found cumbersome and very involving. This is exacerbated by the fact that most of contractors and suppliers who form a large number of business community have low business literacy level, so corrupting public officials becomes the only quick way of getting contracts and therefore remaining in business.

As regards the public officer induced corruption in public procurement, several factors come into play. Firstly the results of the survey instruments has revealed that there generally lack of values and ethics on the part of procurement official. For a long time procurement officers have not been recruited based on their professional knowledge of the trade, but rather they have been just posted after failing in other fields like accounting, human resources and administrations. This has therefore compromised on the quality of output delivery and made them susceptible to corrupt suppliers which they duly accept for lack of ethical conscience. The result of the survey instrument also show that most public procurement officers who responded mentioned that they were not satisfied with their remuneration framework thereby they resort to indulging in corrupt practices to supplement their income. This was further evidenced by the fact that some of them despite the low salary they do not contemplate of leaving the civil service since they are motivated by how easy they find to indulge in corrupt practices in the public sector a thing they envisage to be tough in private sector.

The general corruption tolerance culture where corrupt official go scot free exists in the public sector where it is not normal for any procurement transaction to be concluded without bribe or kick back. The trend is that every procurement transaction has between 10 to 30 percent extra for procurement public officer at contract signing, without which no contract can be entered into. Thus a culture of *katangale aposa salale* in Chichewa, which literally means a belief that income earned through corrupt means by far exceeds one's regular income. It also the researcher's conclusion that lack of knowledge of the procurement legal framework and procurement regulations and their supporting instruments such as desk instructions by some officers responsible for public procurement contribute to corruption as such officers tend to be easy prey of corrupt contractors and suppliers. In the same vein this research concluded that some managers have always placed incompetent officer to manage procurement under the premise of shortage of staff which are easy to manipulate. Lack of public procurement information system was also found to be another factor they can influence procurement. Since government introduced the much talked about Integrated Financial Management Information System (IFMIS) its procurement module has not been activated for no apparent reason. This meant that the procurement process was manual and not integrated with payment system which is automated fully. This created a loophole as personnel in the accounts could generate payment without corresponding contract, leading to loss of revenue.

The research also concluded that another factor that is influencing corruption in public sector in general and public procurement in particular is political interference. Interviews with contractors and suppliers revealed that politicians exert undue pressure on contractors and suppliers of public works and of goods and services respectively to the public sector for funding of their political activities. It was concluded that such undue pressure become more rampant presidential and

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parliamentary election campaign period. Consequently contractors and suppliers tend to inflate prices in their quotations and bids to include politician's share. Such arrangements can get out hand resulting in contractors failing to perform their contractual obligation which end up in Government paying for works not done, goods not received and services not rendered. In comparison with the other two classes of corruption in public procurement the politically induced one is the worst of them all as more often than not affects performance of both public officials and suppliers as they fear political persecution.

In Conclusion therefore the researcher affirm that the problem of corruption that Malawi has in its public procurement is not because of lack of legislative, legal and regulatory frame work, rather it is lack of compliance for the same. Consequently the country is scoring lowly on the other three pillars namely: institutional framework and management capacity; procurement operations and market practices; and integrity and transparency of the procurement system.

### 5.2 Acceptance of the Proposition/Hypothesis

The proposition that corruption cases in public procurement are due to lack of capacity in the procurement delivery system, at both institutional and at individual level, to understand and comply with the country's public procurement policy especially in the areas of legislative framework; institutional framework and management capacity; procurement operations and market practices; and integrity and transparency of the procurement system is therefore accepted on the above conclusion.

### 5.3. Recommendations

In the light of the above conclusions and in line with the research questions of this research, the following discussion describe the strategies considered important for the fight against corruption in public procurement in Malawi.

#### 5.3.1. Supplier/Contractor Induced Public Procurement Corruption

Suppliers must realize that inflating prices and getting paid without undertaking works delivering goods and providing services is not only fraud but also criminal as public sector services are meant to benefit the poor through social sector delivery services such as schools, health delivery facilities teaching and learning materials *inter alia*.

<b>Milestone</b>	<b>Activity</b>	<b>Action Office</b>	<b>Time Frame</b>
<i>Report all corrupt contractors and suppliers to ACB</i>	Establish reporting mechanism	Controlling Officers	First year
<i>Prosecute Corruption</i>	Take corrupt contractors/suppliers to court for prosecution	ACB	Continuous
<i>Blacklist all corrupt contractors/supplier</i>	Report to ODPP all cases of corruption	Procurement Officers/ODPP	Continuous

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**5.3.2 Public Officer Induced Corruption in Public Procurement**

Public officers must be aware that they hold positions in public service on trust. Therefore any misconduct where corruption and misappropriation of public funds is concerned is criminal. Therefore adherence to values and professional ethics is not only a requirement but more a contractual obligation.

<b>Milestone</b>	<b>Activity</b>	<b>Action Office</b>	<b>Time Frame</b>
<i>Professionalization of the procurement function</i>	Recruit professionals to undertake procurement in public sector	DHRMD	Continuous
<i>Adherence to values and ethical code of conduct</i>	Ensure all corrupt officers are disciplined through their professional body	MIPS	Continuous
<i>Establishment of a viable and working public procurement common service</i>	Reform the public procurement common service	Public Service Reform Commission	Immediate

**5.3.3. Public procurement corruption due to political interference**

Politicians from ruling parties must ensure that their role in governance remain that of policy formulation and providing general policy direction. Therefore they must endeavor to stay away from day to day Government operations which is under the purview of civil servants.

<b>Milestone</b>	<b>Activity</b>	<b>Action Office</b>	<b>Time Frame</b>
Political will to stop politician from interfering in procurement matters	Punish and expose all perpetrators	The President	Continuous
Professionalizing the governance structure	Train politicians at all levels on segregation of roles	Chief Secretary	Continuous
Creation of conducive environment for reporting of corrupt leaders	Encourage contractors to desist from offering bribes to politicians for favors	The President	Continuous
Enculturation of asset declaration	Conduct life style audit	Office of Director Asset Declaration	Continuous

**5.4 Summary and Area for Further Research**

This research has dissected the menace of corruption in public procurement and confirmed that indeed it exists in various forms namely: that which happen because the supplier induces it; that initiated by public officers and those that happened due to political interference. The country has well-crafted legal framework that if complied with coupled with staff commitment who may observe high ethical standards can go a long way towards eradicating corruption in public procurement. Political interference must decisively be dealt with if corruption is to disappear in

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public procurement. This research has therefore managed to analyze the dependent variable (corruption) and the independent variables namely the four pillars on how they have been influencing the dependent variable. The researcher also went further to analyze the intervening variable which is political interference but was not conclusive because of time limit as there is need to analyze if the President's leadership style can influence the behavior of politicians and therefore be a catalytic for ending corruption. I therefore recommend that further research be done in that area in order to find lasting solution to the corruption ailment.

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**ANNEXES**

**SURVEY INSTRUMENT ON PUBLIC PROCUREMENT PRACTICES**

Please fill out the attached form using the scale described below.

Example:

Corrupt officials are reported and punished 5, 4, 3, 2, 1

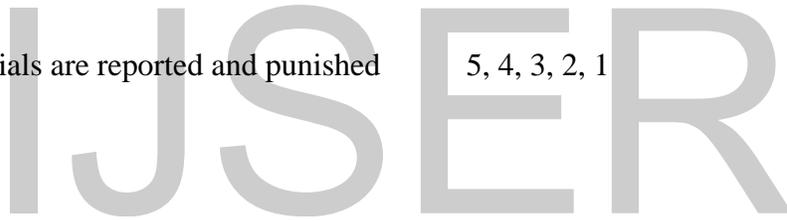
5, Strongly Agree

4, Agree

3, Neutral

2, Disagree

1, Strongly Disagree



Rate questions on a scale of 1 to 5.

Strongly disagree	Disagree	Neutral	Agree	Strongly agree
1	2	3	4	5

### 1.0 Values and Beliefs

- |  |                          |                          |                          |                          |                          |
|--|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| a) Expected standards of values and ethics have been clearly communicated to me. | <input type="checkbox"/> |
| b) Government demonstrates commitment to living the most competent people.       | <input type="checkbox"/> |
| c) Staff in Government are treated equally and fairly.                           | <input type="checkbox"/> |
| d) People in Leadership positions in Government set good example.                | <input type="checkbox"/> |

### 2.0 Team Environment & Responsibilities

- |   |                          |                          |                          |                          |                          |
|---|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| a) My ministry constantly seeks ways to do a better job.                              | <input type="checkbox"/> |
| b) My role and responsibilities are clearly understood by colleagues.                 | <input type="checkbox"/> |
| c) I am empowered to carry out my procurement job responsibilities                    | <input type="checkbox"/> |
| d) Staff are held accountable for resources and activities that they manage.          | <input type="checkbox"/> |
| e) I feel accountable for upholding Government's procurement policies and procedures. | <input type="checkbox"/> |

### 3.0 Communication and Relations

- a) I trust my fellow members of Internal Procurement Committee team
- b) There is smooth communication between procurement entities and Office of Director of Public Procurement.
- c) There is smooth interaction between Office of the Director of Public Procurement and Anti-Corruption Bureau.
- d) Politicians do not interfere in decision making for contracts award.
- e) There is close relationship between my office and suppliers/contractors

### 4.0 Resource Management

- a) Our procurement plan stipulates threshold for each procurement method.
- b) Open tendering is the most used/preferred method of procurement by our entity.
- c) Resources allocated are spent for its intended purpose.
- d) Procurement office in our entity continue functioning well even when key staff is absent.
- e) Our procuring entity has sufficient staff in both numbers and technical ability to meet Government's needs.

### 5.0 Skills, knowledge and learning

- a) All newly hired staff undergo orientation
- c) Consultants are used when the desired skills and qualifications are not available

from existing staff.

### 6.0 Rewards and recognitions

- |   |                          |                          |                          |                          |                          |
|---|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| a) I receive adequate compensation  | <input type="checkbox"/> |
| b) I feel that my work is valued by the Government.                               | <input type="checkbox"/> |
| c) I receive adequate recognition for performance.                                | <input type="checkbox"/> |
| d) Where not adequately compensated I get commissions from suppliers/contractors. | <input type="checkbox"/> |

### 7.0 Policies and procedures

- |   |                          |                          |                          |                          |                          |
|---|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| a) Government procurement policies and procedures are adequate to ensure that corruption risks are effectively controlled.          | <input type="checkbox"/> |
| b) Our procurement entity adheres to Government's procurement law and regulations Guidelines and Procedures in a consistent manner. | <input type="checkbox"/> |
| c) The Government's policies on procurement are well documented and understood.   | <input type="checkbox"/> |
| d) When in a hurry some procedures are bypassed.  | <input type="checkbox"/> |
| e) The decision making process is clear   | <input type="checkbox"/> |

### 8.0 Monitoring and evaluation

- |  |                          |                          |                          |                          |                          |
|--|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| a) Corrupt officials are reported and punished             | <input type="checkbox"/> |
| b) Corrupt contractors/suppliers are reported and punished | <input type="checkbox"/> |
| c) My entity does a good job of analyzing                  | <input type="checkbox"/> |

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contractual performance by  
suppliers/contractors.

d) My entity regularly analyses the market  
to take advantage of prevailing trends.

d) 90% of reported corruption cases are  
related to procurement.

**Demographic information**

Gender: F.....M.....

Age:

IJSER