

RESEARCH ARTICLE

Gender-Responsive Public Procurement in Africa: Barriers and Challenges

Sope Williams*

Stellenbosch University, Stellenbosch, South Africa
Email: sopewe@sun.ac.za

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Abstract

Public procurement is often used to achieve policy goals beyond the purchase of the required goods and services. These goals include the economic advancement of minorities, the promotion of fair labour practices and climate action. In the last two decades, many countries have used public procurement to advance gender equality. This is referred to as gender-responsive procurement and is often implemented through the award of public contracts to women-owned businesses. While many countries have legal provisions designed to increase the award of public contracts to women, gender-responsive procurement is extremely limited and women-owned businesses are not fully integrated into public sector supply chains. This is unfortunate, given that gender-responsive procurement can improve women's economic empowerment, with implications for sustainable development. This article adopts a gender equality and women's economic empowerment lens to examine the legal, policy and cultural barriers to gender-responsive procurement and recommends measures to improve the award of public contracts to women-owned businesses.

Keywords: gender-responsive procurement; gender equality; public procurement; women-owned businesses; women's economic empowerment

Introduction

Public procurement is the process by which government agencies purchase the goods, services and construction works required to function and maximize public welfare. It accounts for 14.9 per cent of GDP for countries belonging to the Organisation for Co-operation and Development (OECD)¹ and is of crucial importance to social and economic development. Public procurement has been used to achieve public policy since the 19th century² and there is literature on the methods, pitfalls and benefits of incorporating “secondary” goals into a public procurement framework.³ It is accepted that, because public procurement represents a significant proportion of GDP, it should be used to achieve policy goals beyond the purchase of the required goods and services. These goals include the economic advancement of disadvantaged groups and climate action.

* Professor and deputy director, African Procurement Law Unit, Faculty of Law, Stellenbosch University; board member, Pavocat-Stellenbosch Academy; fellow, Public Procurement Research Group, University of Nottingham, UK. This research was supported by National Research Foundation of South Africa grant no 119893.

1 *Government at a Glance* (2021, OECD Publishing), available at: <<https://doi.org/10.1787/1c258f55-en>> (last accessed 29 January 2024).

2 C McCrudden *Buying Social Justice: Equality, Government Procurement and Legal Change* (2007, Oxford University Press).

3 See generally O Martin-Ortega and CM O'Brien *Public Procurement and Human Rights: Opportunities, Risks and Dilemmas for the State as Buyer* (2019, Edward Elgar); and A Marx et al (eds) *Research Handbook on Global Governance, Business and Human Rights* (2022, Edward Elgar).

Recently, countries have begun using procurement systems to advance gender equality. This is referred to as gender-responsive procurement and involves selecting goods and services in a way that impacts gender equality and women's empowerment,⁴ often conceived as purchasing from women-owned businesses (WOBs). The OECD describes gender-responsive procurement as the introduction of gender requirements and considerations into public procurement policies and practices,⁵ while the European Institute for Gender Equality defines it as "procurement that promotes gender equality through the purchase of works, supplies, or services by public sector bodies. This means that buyers and suppliers look at the impact of all the contracted activities related to women's and men's interests and concerns and design and deliver contracts in a way that reduces gender inequalities".⁶

Recently there has been a push for an approach to gender-responsive procurement that is not limited to the award of public contracts to women, but prioritizes the award of public contracts to "gender-responsive enterprises", irrespective of the gender of a firm's ownership or management.⁷ A gender-responsive enterprise is one that integrates gender equality and women's empowerment principles into its policies and practices, in alignment with international norms and standards.⁸ The argument is that countries should "leverage gender-responsive procurement for expanded benefits to *all women* in value chains as a means to address gender inequality".⁹ Advocates argue that reliance on purchasing from WOBs in procurement is problematic because paper ownership does not equate to control of the business or mean that workplace gender inequalities are addressed, and that gender-responsive procurement is a form of positive discrimination that may not always be legally possible.¹⁰

Procuring from gender-responsive enterprises is expected to have a systemic impact on gender equality and women's economic empowerment (WEE),¹¹ impacting the structure of private sector supply chains and the gendered norms in organizations that are detrimental to women. The World Bank also advocates "a holistic approach to procurement that allows understanding of the many different ways in which procurement affects women's lives".¹²

Gender-responsive procurement thus has three approaches. The first focuses on the award of public contracts to WOBs, the second focuses on contract awards to gender-responsive businesses, even if they are not women-owned, and the third considers the holistic impact that the delivery of public services will have on gender equality.

In Africa among other places, gender-responsive procurement is limited to the first approach, with an emphasis on increasing the value of public contracts awarded to WOBs. This article is also limited to consideration of that approach, given that the African countries under examination are focused on using procurement to address the disparities in contract awards and have not yet

4 K Chin *The Power of Procurement: How to Source from Women-Owned Businesses: Corporate Guide to Gender-Responsive Procurement* (2017, UN Women), available at: <<https://www.unwomen.org/en/digital-library/publications/2017/3/the-power-of-procurement>> (last accessed 29 January 2024).

5 "Promoting gender equality through public procurement: Challenges and good practices" (OECD Public Governance Policy Papers no 09, 2021) at 3, available at: <https://www.oecd-ilibrary.org/governance/promoting-gender-equality-through-public-procurement_5d8f6f76-en> (last accessed 29 January 2024).

6 "Gender-responsive public procurement" (European Institute for Gender Equality toolkit) at 11, available at: <<https://eige.europa.eu/gender-mainstreaming/toolkits/grpp>> (last accessed 29 January 2024).

7 A Quan (ed) "Rethinking gender-responsive procurement: Enabling an ecosystem for women's economic empowerment" (2021, UN Women and International Labour Organization) at 2, available at: <<https://www.unwomen.org/en/digital-library/publications/2021/07/rethinking-gender-responsive-procurement>> (last accessed 29 January 2024).

8 Ibid.

9 Id at 2 (emphasis added).

10 Id at 7.

11 Id at 8.

12 "Towards gender-responsive procurement" (2022, Procurement for Latin America and the Caribbean and World Bank), available at: <<https://www.nottingham.ac.uk/pprg/documentsarchive/0218-gender-report-0318.pdf>> (last accessed 29 January 2024).

considered preferring gender-responsive enterprises or full gender mainstreaming in the design and delivery of public services.¹³ However, as discussed below, it is possible that prioritizing contract awards to WOBs will eventually evolve into preferences for gender-responsive enterprises, as a more expansive approach better serves the objective of gender equality.

This article examines the relationship between WEE, gender equality and gender-responsive procurement, and provides a synopsis of the gender-responsive procurement approaches in Kenya, Tanzania, Uganda, Rwanda, Ethiopia, the USA and the Dominican Republic. The East African countries were selected as they were the subject of a 2022 policy research project that examined the barriers to WOBs' participation in procurement, with a view to supporting policy advocacy towards increasing this participation. The methodology for this policy research project included a doctrinal review of the legal, policy and academic material on gender-responsive procurement, as well as qualitative interviews with women business owners, regulators, procurement officials and academics in the East African countries.¹⁴ The USA was selected because it was the first country to implement preferential procurement for WOBs and many countries have since copied its approach, while the Dominican Republic was chosen as it is a developing country that has made significant strides in preferring WOBs in the last decade.

The article highlights the legal, policy and cultural barriers to WOBs' participation in procurement, illuminating the different ways in which legal and policy choices, cultural norms and procurement practices intersect to hinder women's access to and participation in public procurement markets, thereby limiting their full participation in the domestic economy. The article concludes with recommendations to address these barriers, based on successful approaches in African and other countries.

Gender equality, women's economic empowerment and gender-responsive procurement

Gender equality seeks to narrow inequitable gaps between men and women, and refers to the state in which access to rights and opportunities is unaffected by gender.¹⁵ It is crucial to eradicating poverty, improving women's rights and spurring economic growth.¹⁶ Differences in economic empowerment are characteristic of gender inequality, making WEE crucial to gender equality. While gender equality and WEE have been in focus since at least the 1970s,¹⁷ the issue found universal support in the passage of the Sustainable Development Goals (SDGs). Goal 5 of the SDGs seeks to address, inter alia, inequalities in access to paid employment, wage gaps, sexual violence and exploitation, the unequal division of domestic work, discrimination in public decision-making, and access to economic resources such as land and property, which are important aspects of WEE.

13 See BA Caruso et al "Water, sanitation, and women's empowerment: A systematic review and qualitative metasynthesis" (2021) *PLOS Water*, available at: <<https://journals.plos.org/water/article?id=10.1371/journal.pwat.0000026>> (last accessed 29 January 2024).

14 "Growth and economic opportunities for women: East Africa" (International Development Research Centre), available at: <<https://www.idrc.ca/en/initiative/growth-and-economic-opportunities-women-east-africa>> (last accessed 29 January 2024). See report by S Williams (with contributions from D Dhar, A Abenakyo Mulema and M Melesse): "Public procurement and women's economic empowerment in East Africa: Challenges and opportunities" (2022, International Development Research Center), available at: <<https://idl-bnc-idrc.dspacedirect.org/server/api/core/bitstreams/5e28313b-0c68-4187-a6b9-7e57c21bf55e/content>> (last accessed 6 February 2024).

15 *Fast Forward to Gender Equality: Mainstreaming, Implementation and Leadership* (2019, OECD), available at: <<https://www.oecd.org/gov/fast-forward-to-gender-equality-g2g9faa5-en.htm>> (last accessed 29 January 2024).

16 AM Golla et al "Understanding and measuring women's economic empowerment: Definition, framework and indicators" (2011, International Center for Research on Women) at 3, available at: <<https://www.icrw.org/wp-content/uploads/2016/10/Understanding-measuring-womens-economic-empowerment.pdf>> (last accessed 29 January 2024).

17 EK Sarter "The development and implementation of gender equality considerations in public procurement in Germany" (2020) *Feminist Economics* 26; A de Haan "The win-win case for WEE and growth: Review of the literature" (GWP 2017-03 concept report, GrOW Working Report Series).

WEE exists when a woman “has both the ability to succeed and advance economically and the power to make and act on economic decisions”.¹⁸ It is further described as occurring “when women enjoy their rights to control and benefit from resources, assets, income and their own time, and when they have the ability to manage risk and improve their economic status and wellbeing”.¹⁹

Gender-responsive procurement supports women to advance economically and compete in public markets, and can narrow gendered economic and financial gaps; it is important for several reasons. First, women have a human right to realize their economic rights.²⁰ Secondly, there is evidence that economies thrive when women’s capacities are fully utilized,²¹ with growth benefits when WOBs obtain public contracts.²² There is a positive relationship between gender equality and domestic economic competitiveness,²³ and the growth of WOBs may increase cross-border trade in Africa.²⁴ In countries where formal employment opportunities are limited,²⁵ entrepreneurship offers a path to economic empowerment and it is necessary for countries to support this activity.²⁶ The prioritization of women in procurement includes them in a sphere of economic activity from which they are often excluded,²⁷ ensuring they can participate meaningfully in the economy.

Thirdly, because women represent half of the world’s human capital, it is only fair that they access economic benefits available through procurement. Fourthly, gender-responsive procurement is an important pathway towards sustainable development, as sustainable development requires WEE, which is relevant to several SDGs, including ending poverty, ending hunger and decent work. Women tend to be community-oriented and often reinvest their profits in their families and communities,²⁸ benefiting the broader community, with implications for poverty alleviation.

18 Golla et al “Understanding and measuring”, above at note 16 at 4.

19 “Oxfam’s conceptual framework on women’s economic empowerment” (2017, Oxfam) at 8, available at: <<https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620269/gt-framework-womens-economic-empowerment-180118-en.pdf;jsessionid=D3B1BFEA96633A539BF68284864A8EBB?sequence=7>> (last accessed 6 February 2024).

20 International Covenant on Economic, Social and Cultural Rights (16 December 1966) 933 *UN Treaty Series* 3, art 3.

21 BC Basheka “Inclusive public procurement: Opportunities, barriers and strategies (OBS) to women entrepreneurs’ participation in public procurement in Uganda” (2018) 26 *Administratio Publica* 86.

22 NE McGann and NI Ali “Mainstreaming gender in public procurement” (28 April 2021) *World Bank blogs*, available at: <<https://blogs.worldbank.org/governance/mainstreaming-gender-public-procurement>> (last accessed 29 January 2024); “The effect of women’s economic power in Latin America and the Caribbean” (World Bank Latin America and Caribbean Poverty and Labor Brief 74103, 2012), available at: <<https://documents1.worldbank.org/curated/en/731771468010902462/pdf/The-effect-of-womens-economic-power-in-Latin-America-and-the-Caribbean.pdf>> (last accessed 6 February 2024).

23 A Lopez-Claros, A Ellis and R Halperin-Kaddari “The gender equality and governance index” (2020, Global Governance Forum), available at: <<https://globalgovernanceforum.org/wp-content/uploads/2020/11/Gender-Equality-and-Governance-Index-2020.5.pdf>> (last accessed 29 January 2024).

24 “A study for the opportunities in AfCFTA for women in the informal cross border trade” (2022, African Peer Review Mechanism), available at: <<https://au.int/en/documents/20220311/study-opportunities-afcfta-women-informal-and-cross-border-trade>> (last accessed 29 January 2024).

25 “Towards gender balance: Understanding the barriers and solutions to include women-led businesses in East Africa (Uganda)” (2023, Africa Freedom of Information Centre), available at: <https://africafoicentre.org/wpdmpro/towards-gender-balance-understanding-the-barriers-and-solutions-to-include-women-led-businesses-in-public-procurement-in-uganda-final-report/?wpdm_dl=22311&refresh=65c24b04b45d41707232004> (last accessed 6 February 2024).

26 Chin *The Power of Procurement*, above at note 4; “Profiting from parity: Unlocking the potential of women’s business in Africa” (2019, World Bank), available at: <<https://openknowledge.worldbank.org/handle/10986/31421>> (last accessed 29 January 2024).

27 “Towards a gender balance in public procurement: Understanding the barriers and solutions to include women-led businesses” (2020, Open Contracting Partnership and Value for Women), available at: <<https://www.opencontracting.org/resources/towards-gender-balance-in-public-procurement/>> (last accessed 29 January 2024).

28 “Investing in women and girls: The breakthrough strategy for achieving all the MDGs” (2010, OECD Development Assistance Committee), available at: <<https://www.oecd.org/dac/gender-development/45704694.pdf>> (last accessed 29 January 2024).

Women also often partner with other women, increasing the gendered impact of support to WOBs.²⁹

Despite the importance of gender-responsive procurement, it has not been implemented to its full potential and many countries struggle to integrate WOBs fully into public sector supply chains. It is often stated that WOBs obtain only 1 per cent of global procurement contracts,³⁰ despite accounting for over 49.6 per cent of the global population.³¹ While very few African countries have data on the percentage of public contracts awarded to WOBs, available figures stand at between 3 and 5 per cent.³² The value of public contracts awarded to WOBs does not reflect the number of WOBs in sub-Saharan Africa³³ and this inequity should be a source of concern. While there is a gender gap in the levels of entrepreneurial activity between men and women,³⁴ and a resulting disparity in the value of procurement awards to WOBs, the gap alone does not explain the low value of contract awards to WOBs; evidence-based policies are required to address this gap.

Defining women-owned business

An important aspect of gender-responsive procurement is defining a “woman-owned business” in a fair and inclusive way, as this determines which businesses qualify for gender prioritization. Definitions use a test of ownership (for WOBs), a test of control and management (for women-led businesses) or a test that combines elements of both ownership and control / management. For instance, in Kenya and Tanzania, businesses must have 70 per cent women ownership and be led by women to qualify for preferential procurement, while the USA uses a 51 per cent ownership requirement for businesses to qualify as women-owned.

The International Trade Centre has identified problems with the 51 per cent ownership / management / control threshold, including cultural or tax reasons for spouses splitting business ownership 50:50, and the existence of family businesses managed by women who may not have a controlling share.³⁵ Despite these problems, many countries rely on a 51 per cent ownership requirement. While a reasonable requirement is important to reduce the risks of tokenism and fronting,³⁶ countries

29 S Williams-Elegbe “Equity and inclusion of women-owned businesses in public procurement in South Africa” (2021, Open Contracting Partnership), available at: <<https://www.open-contracting.org/resources/equity-and-inclusion-of-women-owned-businesses-in-public-procurement-in-south-africa/>> (last accessed 29 January 2024).

30 “New Report: Making procurement work for women” (2020, International Trade Centre), available at: <<https://intracen.org/news-and-events/news/new-report-making-public-procurement-work-for-women>> (last accessed 29 January 2024).

31 “Population, female (% of total population)” (World Bank), available at: <<https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS>> (last accessed 29 January 2024).

32 *Report: Gender Transformation on Procurement 2018 / 2019* (2019, Commission for Gender Equality) at 36, available at: <<https://cge.org.za/wp-content/uploads/2021/01/gender-transformation-on-procurement-2018-2019.pdf>> (last accessed 29 January 2024); “New report calls for deliberate and bold measures to enhance gender responsive procurement in Rwanda” (15 November 2019, UN Women), available at: <<https://africa.unwomen.org/en/news-and-events/stories/2019/11/new-report-calls-for-deliberate-and-bold-measures-to-enhance-gender-responsive-procurement-in-rwanda>> (last accessed 29 January 2024).

33 The percentage of firms in which women participate in ownership in sub-Saharan Africa in 2023 is 42.6%: “Enterprise surveys: Gender” (World Bank), available at: <<https://www.enterprisesurveys.org/en/data/exploretopics/gender>> (last accessed 6 February 2024).

34 M Fazekas, Y Kazmina and J Wachs “Gender in public procurement: Extent, distribution, and impacts” (2021, Government Transparency Institute), available at: <http://www.govtransparency.eu/gender-in-european-public-procurement-extent-distribution-and-impacts/?utm_source=rss&utm_medium=rss&utm_campaign=gender-in-euro-pean-public-procurement-extent-distribution-and-impacts> (last accessed 29 January 2024).

35 “Technical note: Definitions for women’s businesses” (2020, International Trade Centre), available at: <<https://learning.intracen.org/mod/resource/view.php?id=16663#:~:text=The%20requirement%20by%20some%20governments,to%20markets%20by%20E2%80%9Cwomen%2Dled>> (last accessed 6 February 2024).

36 “Empowering women through public procurement” (2014, International Trade Centre), available at: <<https://intracen.org/file/womenprocurementguidefinalwebpdf#:~:text=Government%20procurement%20offers%20a%20unique,of%20GDP%20in%20developing%20countries>> (last accessed 6 February 2024).

must adopt definitions that are culturally and contextually relevant to ensure that WOBs are not locked out by restrictive definitions.

Certification schemes are often used to ensure that WOBs meet definitional thresholds, but such schemes can be problematic where verification is inadequate. For instance, in the USA, an examination of a WOB self-certification scheme found that 40 per cent of businesses should not have attested that they were WOBs.³⁷ However, the challenges with verifying business ownership can be ameliorated if countries adopt a preferential approach that includes gender-responsive enterprises as discussed above, and also move to integrating beneficial ownership registries with procurement databases. Beneficial ownership data provides information on the natural persons who own, benefit from and control a company,³⁸ and could be used to verify the eligibility of WOBs for prioritization in procurement.

Gender-responsive procurement: Country approaches, practices and impact

This section examines the legal, policy and institutional framework for gender-responsive procurement in the selected countries and assesses the impact of the gender-responsive framework, where this information exists.

Kenya

Kenya was one of the first African countries to implement gender-responsive procurement. The 2010 Kenyan Constitution requires public procurement law to provide for categories of preference in the allocation of contracts and the protection or advancement of persons, categories of persons or groups previously disadvantaged by unfair competition or discrimination.³⁹ Further, the Kenyan Public Procurement and Asset Disposal Law, in implementing the constitution, provides that “every procuring entity shall ensure that at least 30 per cent of its procurement value in every financial year is allocated to the youth, women and persons with disability”.⁴⁰ It also requires that the amounts paid out under such contracts are paid into accounts where the target person is a mandatory signatory to the account.⁴¹

In 2013, the Kenyan government launched the Access to Government Procurement Opportunities (AGPO) programme to create an institutional framework for preferential procurement and ensure that the target groups (women, youth and persons with disabilities) can access public procurement. A firm wishing to participate in procurement opportunities must be registered with AGPO. The benefits of registering include: the ability to participate in 30 per cent set-asides; qualification for local purchase / service orders financing from the Kenyan Youth / Women Enterprise Development Fund; exclusion from bid bonds; and invoice discounting with financial institutions.⁴² AGPO streamlined and simplified the documentation usually required for company incorporation and for public bids, and collates contract opportunities on its website.

Kenya uses a higher threshold for defining a WOB than that suggested by the International Standards Organization and defines a woman as “a person of the female gender, who has attained

37 B Orser, A Riding and J Week “The efficacy of gender-based federal procurement policies in the United States” (2019) 53 *Small Business Economics* 491 at 496.

38 “Beneficial ownership data in procurement” (2021, Open Ownership), available at: <<https://www.openownership.org/uploads/oo-briefing-bo-data-in-procurement-2021-03.pdf>> (last accessed 29 January 2024).

39 Constitution of Kenya, art 227.

40 Kenyan Public Procurement and Asset Disposal Law 2015, sec 157(10).

41 Id, sec 157(11).

42 “Deepening open government through women’s participation in public contracting: Feminist open government: Research on the extent to which open government promotes open contracting among women in Kenya, Nigeria and Malawi” (2019, Africa Freedom of Information Centre), available at: <<https://africafoicentre.org/wpdmpro/feminist-open-government-research-on-the-extent-to-which-open-government-promotes-open-contracting-among-women-in-kenya-nigeria-and-malawi/?wpdmdl=3219&refresh=65c2533b14f261707234107>> (last accessed 6 February 2024).

the age of 18 and includes a company, association or body of persons, corporate or unincorporated in which at least 70 per cent of the shareholders, members or persons and a majority of its directors are of the female gender”.⁴³ The qualification test is thus 70 per cent ownership by women and being led or controlled by a “majority” of women. This is a much higher threshold than that used in the USA, as discussed below.

Impact of the Kenyan scheme

AGPO has had mixed success, with some research suggesting it has not had the desired impact, as many government departments simply do not implement the 30 per cent set-aside rule.⁴⁴ A sample of tenders examined by Hivos (an international development organization) worth KES 5 million (USD 43,000) and above, issued between 2013–16, shows that only 7.71 per cent of tenders were awarded under AGPO in that period (4 per cent of contracts by value) compared to the 30 per cent requirement.⁴⁵ However, it is possible and likely that a greater number of lower-value tenders were awarded to AGPO-registered businesses, although there is no data on this. Research by Hivos indicates that 41.1 per cent of the businesses registered with AGPO are WOBs and 52 per cent of these were able to obtain a government contract in the period under review.⁴⁶

It must be noted that contract awards to the target groups are on the increase in Kenya, and 2021 data from the Kenyan National Bureau of Statistics indicated that the total value of public procurement reserved for youth, women and persons with disabilities was expected to increase by 25 per cent from KES 65.3 billion (USD 540 million) in 2020–21 to KES 81.6 billion (USD 675 million) in 2021–22.⁴⁷ Similarly, the number of tenders awarded to women was expected to increase by 20.9 per cent and the value of awards to women was expected to increase by 27.5 per cent to KES 24.4 billion (USD 202 million) in the same period.⁴⁸ The number of tenders awarded to women was also expected to account for over half of all AGPO tenders in 2021–22.⁴⁹ AGPO has contributed to a significant increase in the number of enterprises owned by youth, women and people with disabilities, with 36 per cent of a random sample of AGPO-registered firms reported to have won a tender, which resulted in an increase in annual revenue of 71 per cent for those firms.⁵⁰ The income from these initiatives accounted for 35 per cent of sales and 38 per cent of overall profit.⁵¹

There are still some challenges and Hivos reports that the WOBs that obtain public contracts under AGPO are led by urban, well-educated, privileged women, with the implication that truly disadvantaged (and often rural) women who cannot navigate the complex procurement systems are locked out of opportunities.⁵² There are also structural gaps between the business of firms registered with AGPO and advertised contract opportunities. Most tenders advertised under AGPO relate to

43 Kenyan Public Procurement and Asset Disposal Law 2015, sec 2.

44 “Kenya’s efforts to empower women, youth and persons with disability through public procurement” (2019, Hivos) at 39, available at: <<https://hivos.org/assets/east-africa/2018/02/Agpo-Full-Report-Web-version.pdf>> (last accessed 6 February 2024).

45 Id at 29.

46 Id at 24.

47 “Economic Survey 2022” (Kenya National Bureau of Statistics) at 7, available at: <<https://www.knbs.or.ke/download/economic-survey-2022/>> (last accessed 7 February 2024).

48 Id at 408.

49 Ibid.

50 “Kenya’s efforts to empower”, above at note 44 at 7.

51 Ibid.

52 Id at 35. See also, TK Nganga “Kenya: Assessment of access to government public procurement opportunities for women, youth and persons with disabilities” (2017), available at: <<https://wtochairs.org/sites/default/files/KENYA%20ASSESSMENT%20OF%20ACCESS%20TO%20GOVERNMENT%20PUBLIC%20PROCUREMENT%20OPPORTUNITIES%20FOR%20WOMEN%2C%20YOUTH%20AND%20PERSONS%20WITH%20DISABILITIES.pdf>> (last accessed 29 January 2024).

construction-related businesses, while most AGPO-registered firms are in the services and retail sectors. While 35 per cent of tender opportunities related to construction, only 6 per cent of AGPO firms are in the construction business.⁵³

One way of closing this gap is to address the barriers to women's entrepreneurship in specific sectors. In the USA, the gender-responsive procurement framework permits contracting entities to limit the call for bids to WOBs in sectors where women are under-represented, and there is an expectation that two or more WOBs will bid and the contract can be awarded at a fair market price.

Tanzania

Tanzania included gender-responsive procurement in the 2016 amendments to its Procurement Act. As in Kenya, government departments are required to set aside 30 per cent of their annual procurement spend for "special groups", defined as women, youth, the elderly and persons with disabilities.⁵⁴ A firm qualifies for set-asides if at least 70 per cent of its membership includes members of these special groups and it is 100 per cent headed by persons from these groups.⁵⁵ This mirrors the Kenyan regulations, which require an ownership requirement of 70 per cent. Thus, to qualify for the set-asides in Tanzania, a WOB must be 70 per cent women-owned and 100 per cent women-led. These requirements may be difficult to meet and represent an even higher ownership threshold than that mandated by Kenya, the USA or the International Standards Organization's IWA 34:2021.

Under Tanzania's "Guidelines for participation of special groups in public procurement" (Guidelines), procuring entities are required to set-aside 10 per cent of their annual procurement spend for people with disabilities, 10 per cent for youth, 5 per cent for women and 5 per cent for elders, essentially reserving 5 per cent of contract spend for women,⁵⁶ as is the case in the USA and the Dominican Republic, discussed below.

The Guidelines provide direction on the process for registering WOBs, which must include business development training and permit procuring entities to unbundle larger contracts subject to approval.⁵⁷ This is done to enable small and medium enterprises (SMEs) to bid for contracts of a more manageable size, as contract bundling has been shown to be a barrier to SMEs in public procurement.⁵⁸ Tender securities are also not required from members of the special groups and contract payments to such businesses shall be made in a timely manner to ensure firms' sustainability.⁵⁹ Additionally, government departments may grant advance payments to facilitate contract execution.⁶⁰ Procuring entities must report on whether they meet the requirements of the scheme, and the Public Procurement Regulatory Authority is required to maintain and update a database of registered special groups.⁶¹

Impact of the Tanzanian scheme

The set-aside scheme in Tanzania is relatively recent, as the Guidelines were issued in May 2020, and revised in October 2023, and it may be too early to judge their impact. Nevertheless,

53 "Kenya's efforts to empower", above at note 44 at 27.

54 Public Procurement Act 2011, sec 64(2)(c) (as amended).

55 Public Procurement (Amendment) Regulations 2016, reg 30A.

56 "Guidelines for participation of special groups in public procurement" (2023, Public Procurement Regulatory Authority), para 25, available at: <<https://www.ppra.go.tz/uploads/documents/en-1702741658-Revised%20%20Guideline%20for%20Special%20Groups%20Oct%202023.pdf>> (last accessed 6 February 2024).

57 Id, para 13.

58 PN Oluka, M Okoche and G Mugurusi "Public procurement and competitiveness of women-owned businesses: A structural equation model (SEM) for gender-responsive procurement in Uganda" (2020) *World Journal of Entrepreneurship, Management and Sustainable Development* 17.

59 The Guidelines, para 16.

60 Id, para 14.

61 Id, para 19.

Tanzania has tried to avoid some of the challenges faced by gender-responsive schemes in other countries, by addressing the barriers to SMEs accessing procurement, including aggregated contracts, bid securities and long payment schedules. It has also integrated business development training into the process of certification for WOBs, which is crucial, since contractor development has been highlighted as an important aspect of ensuring contractors can meet public sector needs.⁶²

Uganda

Uganda's procurement framework was amended in July 2021 to provide for reservations to "promote the participation of registered associations of women, youth and persons with disabilities".⁶³ This approach mirrors the approach to gender-responsive procurement in Kenya and Tanzania, where WOBs are prioritized alongside other target groups. The procurement framework also permits the use of preferences and reservations for local content and for sustainable procurement, described in the legislation as "environmental protection, social inclusion and stimulating innovation".⁶⁴ Thus it is possible for WOBs to participate in procurement under the gender reservations, and the provisions on local content and social inclusion.

Impact of the Ugandan scheme

It must be noted that the regulations implementing the legal framework on gender-responsive procurement have not yet been adopted and there is no institutional architecture to implement the set-asides. Before the 2021 amendments, research on women's participation in procurement indicated that only 22 per cent of WOBs in Uganda regularly participated in procurement processes and, of those, just 30 per cent obtained a public contract on more than one occasion.⁶⁵ Thus, before the legislative amendments, an extremely limited number of WOBs in Uganda obtained public contracts. Interestingly, 22 per cent of WOBs in Uganda regularly participate in public procurement training,⁶⁶ suggesting a correlation between capacity to tender and tendering success. This was the position before the adoption of formal legislation; it is not yet clear what impact the new legislation will have as the operational infrastructure is yet to be developed.

Rwanda

Rwanda is a paradox in relation to gender-responsive procurement. While it is one of the most gender-equal countries in the world, ranking 12th on a list of 146 countries in the 2023 Global Gender Gap Report⁶⁷ and 30 per cent of the board of the procurement regulator are required to be women,⁶⁸ its procurement law does not provide for gender-responsive procurement. However, the law does provide for flexibilities for new and small businesses and price preferences for domestic contractors. These flexibilities will benefit WOBs, given that WOBs often operate in the SME sector,

62 IA Changalima, IJ Ismail and AD Mchopa "A review of the forms, rationale, and challenges of supplier development in public procurement: Lessons for public buyers in Tanzania" (2021) 7 *Future Business Journal*, available at: <<https://doi.org/10.1186/s43093-021-00108-2>> (last accessed 29 January 2024).

63 Public Procurement and Disposal Act 2003, sec 59B.

64 Id, sec 61B.

65 Basheka "Inclusive public procurement", above at note 21 at 93.

66 Ibid.

67 *Global Gender Gap Report 2023* (2023, World Economic Forum) at 11, available at: <https://www3.weforum.org/docs/WEF_GGGR_2023.pdf> (last accessed 6 February 2024).

68 "Public procurement user guide" (2010, Republic of Rwanda Ministry of Finance and Economic Planning), para 2.1, available at: <https://www.minecofin.gov.rw/fileadmin/user_upload/Minecofin/Publications/LAWS/Public_Procurement_Laws/PUBLIC_PROCUREMENT_USER_GUIDE.pdf> (last accessed 6 February 2024). The Rwandan public procurement regulator is responsible for supervising public procurement and developing Rwanda's national procurement policies, strategies and human capacity.

with 38 per cent of Rwandan SMEs owned by women.⁶⁹ Under the procurement regulations, prior experience is waived for new and small businesses, and prioritization must be given to Rwandan bidders and goods produced in Rwanda under certain thresholds.⁷⁰ There are price preferences of 10 per cent for construction and non-consultancy services, and a 15 per cent price preference for goods and consultancy services for local bidders.⁷¹

Research conducted by UN Women indicated that WOBs obtained 13 per cent of procurement contracts, representing only 5 per cent of the value of public contracts between 2016 and 2019.⁷² Rwanda's gender policy has highlighted the gender gap in procurement and the absence of any mechanism to ensure gender equity in procurement, and noted its effect on WEE.⁷³ According to the gender policy, the procurement disparity ratio in Rwanda is very high, given that women own over 40 per cent of businesses, but receive only 5 per cent of public procurement spend.

The gender policy recommends the introduction of incentives in the form of affirmative action to ensure that women actively participate in procurement and are empowered to bid for high-value contracts. It also recommends designing capacity-building interventions to enhance WOBs' proficiency to navigate the procurement process, use e-procurement platforms and understand tax processes.

Impact of the Rwandan scheme

As noted above, there are no legal mandates for gender-responsive procurement in Rwanda and there is a low level of public contract awards to WOBs. It is thus hoped that the recommendations on gender-responsive procurement in the gender policy will be implemented and that Rwanda will develop a scheme to prioritize WOBs in its procurement system, starting with the creation of legal provisions. As discussed below, legislation requiring preferences for WOBs is important, as procurement equity will not happen by chance, even in countries like Rwanda with a high level of gender equality.

Ethiopia

Ethiopia mirrors the Rwandan approach and does not have a legal framework for gender-responsive procurement. However, preferences and flexibilities are granted to small businesses, which will benefit WOBs operating in the SME sector.⁷⁴ Under Ethiopian law, a margin of preference of 3 per cent is granted to SMEs and they are further exempted from furnishing a bid security, a performance security or an advanced payment guarantee for public contracts and can provide a letter of guarantee instead.⁷⁵ SMEs are also entitled to obtain bidding documents free of charge.

Interviews with procurement officials in Ethiopia⁷⁶ revealed that, when equally competent SMEs compete, there is an informal system for prioritizing them. Public agencies prioritize businesses

69 "National gender statistics report" (2021, National Institute of Statistics of Rwanda) at 52, available at: <<https://statistics.gov.rw/publication/1850>> (last accessed 29 January 2024).

70 Ministerial Order Establishing Regulations on Public Procurement No 001/23/10/ TC of 10 October 2023, art 46, available at: <<https://www.rppa.gov.rw/index.php?eID=dumpFile&t=f&f=80742&token=145831f9314ef2fed0fe43580912f0970d3f3250>> (last accessed 6 February 2024).

71 Id, arts 63 and 64.

72 "New report calls", above at note 32.

73 "Revised national gender policy: Accelerating the effectiveness of gender mainstreaming and accountability for national transformation" (2021, Rwanda Ministry of Gender and Family Promotion), available at: <https://www.migeprof.gov.rw/fileadmin/user_upload/Migeprof/Publications/Guidelines/Revised_National_Gender_Policy-2021.pdf> (last accessed 29 January 2024).

74 YH Hagos "Small and medium enterprise in Ethiopia: The challenges and prospects" (2012, thesis submitted to KDI School of Management), available at: <<https://archives.kdischool.ac.kr/bitstream/11125/30362/1/Small%20and%20medium%20enterprise%20in%20Ethiopia.pdf>> (last accessed 29 January 2024).

75 Federal Democratic Republic of Ethiopia Federal Public Procurement Directive 2010, sec 16.20.5.

76 The author carried out interviews with officials in March 2022: copies on file with the author.

owned by male unemployed youth, followed by businesses owned or controlled by women and, finally, businesses owned by persons with disabilities. This ranking is a political decision intended to address (and placate) the high level of youth unemployment in Ethiopia.

There are differences between procurement at the federal and state levels, and the interviews revealed that the states are more involved in advancing SMEs, relying on the use of set-asides and thresholds under which contracts are exclusively reserved for SMEs. For instance, in some states, SMEs alone may bid for contracts below ETB 500,000 (USD 9,830). These set-asides apply to industries dominated by SMEs, such as textiles, laundry, car washes, bus station construction and management, scrap metal purchasing and the construction of low-cost apartments. Where WOBs specialize in these sectors, they can bid for such contracts, but will compete with men-owned businesses. Apart from participating as SMEs, there are no preferences or incentives for WOBs as a special category.⁷⁷ However, there are localized actions designed to support WOBs and the interviews reported that, since 2007, some state governments require universities to purchase the local bread, known as *injera*, exclusively from women-owned SMEs, to ensure that WOBs, who primarily produce *injera*, benefit from university procurement spend.

According to interviews and the literature in Ethiopia, there has not been much intervention to support WOBs.⁷⁸ There are also systemic challenges, as a purchasing agency (the Public Procurement and Property Disposal Service) is required to aggregate demand across federal procuring entities and purchase items in bulk through framework contracts. At present, much federal procurement has been outsourced to this agency, which locks SMEs out of procurements for common use items. These framework contracts last up to three years and can hinder SMEs' ability to obtain public contracts in that timeframe.

Impact of the Ethiopian scheme

Ethiopia has no legal requirements for gender-responsive public procurement and the award of contracts to WOBs is executed on an ad-hoc basis by the states or contracting authorities. Since these measures are not tracked or uniformly applied, it is difficult to understand their impact. Some procurement measures have also had unintended consequences for SMEs and WOBs, and the author's interviews revealed that demand aggregation has been devastating for SME participation in procurement.

The USA

The USA's approach to gender-responsive procurement is important as, in 2000, the US was the first country to require set-asides for WOBs, through the Women-Owned Small Business (WOSB) federal contract program, under the Small Business Administration (SBA) agency. Competition for contracts in sectors where women are under-represented is limited to businesses that participate in the WOSB program. Joining the WOSB program makes a business eligible to compete for the set-asides. Some contracts are further restricted to economically disadvantaged WOSBs. The SBA works with US federal agencies to increase contracting opportunities and achieve the 5 per cent contracting goal for WOSBs.⁷⁹ The USA defines a WOSB as a small business that is at least 51 per cent owned and controlled by women who are US citizens and has women managing its day-to-day operations. The USA's ownership requirement is thus lower than that in Kenya and Tanzania, which presumably makes it easier for WOBs to qualify for the set-asides.

77 G Singh and R Belwal "Entrepreneurship and SMEs in Ethiopia: Evaluating the role, prospects and problems faced by women in this emergent sector" (2008) 23 *Gender in Management* 120 at 123.

78 Ibid.

79 "Women-owned small business federal contract program" (2024, SBA), available at: <<https://www.sba.gov/federal-contracting/contracting-assistance-programs/women-owned-small-business-federal-contract-program>> (last accessed 6 February 2024).

The approach to gender-responsive procurement in the USA has different prongs. First, there is a requirement that 5 per cent of prime contracting spend be set aside for WOSBs. Secondly, contracting officers can limit competition for contracts in some sectors to WOSBs, where there is a reasonable expectation that two or more WOSBs will submit a bid and the contract can be awarded at a fair market price. Thirdly, the SBA provides support, training and certification for businesses to qualify as WOSBs.

The impact of the US WOSB program

The SBA collects data on the WOSB program. For 2022, the US government fell slightly short of its target to award 5 per cent of federal contracts to WOSBs, awarding them 4.57 per cent (with total contract values of USD 28.1 billion), a slight drop from its 2021 achievement of 4.63 per cent.⁸⁰ While the COVID-19 pandemic had an impact on procurement outcomes and may have had an adverse impact on WOSB contracting, the SBA scorecards do not generally show a notable increase in the number of contract awards to WOSBs over the last few years.

The Dominican Republic

The Dominican Republic serves as a model of gender-responsive procurement. In 2012, the procurement regulator, Contrataciones Públicas, decided to address the gender inequity in procurement and commenced a multi-pronged approach to increase contract awards to WOBs. The regulator first collated gender disaggregated data on women's participation in public procurement, which did not exist before then. A dedicated supplier database for WOBs was created, helping to target WOBs with specific measures. A WOB is defined as a business owned by women or a business with a majority of women participating in the business.⁸¹

Like the USA and Tanzania, the Dominican Republic passed legislation requiring 20 per cent of public spending to be spent with medium, small and micro enterprises (MSMEs) and further mandated that 5 per cent of contracts to MSMEs be awarded to WOBs.⁸² Contrataciones Públicas identified the process, procedural and cultural barriers that prevented women's participation in public procurement. A procurement portal was created to aggregate contract opportunities and ease the process of bidding for public contracts, and discrimination was addressed through an anonymous draw method to select qualified suppliers, which eliminated bias, leading to the award of more contracts to WOBs.⁸³ In addition, public officials visited WOBs in various regions to understand their needs and provide training on navigating the procurement portal and process.

The impact of the Dominican Republic scheme

The approach by the Dominican Republic has been lauded as one of the most impactful in the region and is being emulated by other countries in Latin America and the Caribbean.⁸⁴ By 2020, 29 per cent of government contracts went to WOBs, up from 10 per cent in 2012⁸⁵ and amounting to 17 per cent of total contract values.⁸⁶

80 "Government wide performance: FY2022 small business procurement scorecard", available at: <<https://www.sba.gov/agency-scorecards/scorecard.html?agency=GW&year=2022>> (last accessed 6 February 2024).

81 Law No 488-08 Establishing a Regulatory Regime for the Development and Competitiveness of Micro, Small and Medium Enterprises (30 December 2008) *Official Gazette* No 10502.

82 Dominican Republic Decree No 543-12.

83 R Colman "Women win one in four contracts in the Dominican Republic thanks to inclusive procurement reforms" (2020, Open Contracting Partnership), available at: <<https://www.open-contracting.org/2020/09/23/women-win-one-in-four-contracts-in-the-dominican-republic-thanks-to-inclusive-procurement-reforms/>> (last accessed 29 January 2024).

84 *Ibid.*

85 *Ibid.*

86 "Towards a gender balance", above at note 27 at 8.

The Dominican Republic highlights that successful gender-responsive procurement depends on addressing multiple issues. The country addressed the legal mandate, data issues, certification requirements, bias against WOBs, and the need for training and capacity-building, and provides a model for other countries implementing gender-responsive procurement.

Challenges and barriers to gender-responsive procurement

There are several challenges and barriers to gender-responsive procurement. These include: structural and systemic challenges; legal and policy barriers; cultural and social norms; and financial challenges.⁸⁷ This section highlights the impediments to WOBs in the procurement context, obtained from both an analysis of existing research and from interviews conducted with stakeholders. It may be noted that some of these impediments are not peculiar to WOBs but affect SMEs more generally.

Structural and systemic challenges

Absence of gender-responsive procurement planning

Although public procurement includes a planning phase, this phase does not attract adequate legislative, policy or public attention. Procurement planning involves a needs analysis, market research, budgeting and bid drafting specifications. The research shows that in many African countries procurement planning does not contain a gender dimension, which is unfortunate given that procurement planning can be utilized to increase gender-responsive procurement even in the absence of legal and policy mandates.

Lack of information and gender disaggregated data

Public procurement is fraught with an information asymmetry; this is worse for WOBs and SMEs, especially those situated in rural areas. WOBs interviewed in different countries complained about the lack of awareness of procurement opportunities and the services available to assist them in accessing those opportunities.⁸⁸

On the other side of this information asymmetry is a dearth of meaningful insight and data on gender-responsive procurement. While there has been an increase in the publication of procurement data⁸⁹ based on open data standards, this data is not disaggregated by gender and remains “scarce, incomplete and limited”.⁹⁰ The scarcity of data prevents governments from understanding the realities of gender-responsive procurement in order to target interventions based on actual data rather than assumptions.⁹¹ The lack of disaggregated data also makes it difficult to assess the impact of existing gender-responsive schemes. While the available data on gender-responsive procurement frames success in terms of the value of contracts awarded to WOBs, broader metrics are needed to assess whether gender-responsive procurement is having a discernible impact on women’s economic advancement, women’s power and agency, and the sustainability and growth of WOBs.

Uneven distribution of WOBs and procurement opportunities

Evidence suggests that beneficiaries of gender-responsive procurement schemes are situated in urban areas, despite initiatives being national in scope. For example, an analysis of the Kenyan AGPO illustrated that 67 per cent of the beneficiaries were registered in the capital, Nairobi.⁹²

87 “Making procurement work”, above at note 30 at 3.

88 BC Basheka and CJ Auriacombe “Barriers to women’s participation in public procurement in Africa: Empirical evidence from Uganda” (2020) 12 *International Journal of Social Sciences and Humanity Studies* 222.

89 “Towards gender-responsive procurement”, above at note 12 at 15.

90 *Ibid.*

91 *Ibid.*

92 “Kenya’s efforts to empower”, above at note 44 at 28.

A similar situation persists in Uganda, where 70 per cent of registered WOBs are in urban areas.⁹³ Much more needs to be done to include women from diverse and disadvantaged backgrounds so that procurement contracts do not simply reinforce and perpetuate existing patterns of privilege.

There are also structural issues in the kinds of sectors in which women participate and the sectors in which procurement opportunities exist. In Kenya, for instance, there is a mismatch between services offered by the firms registered with AGPO and the tender opportunities available. WOBs tend to be in the retail and service sectors, and tender opportunities are concentrated in the construction sector.⁹⁴ This disparity further limits women's access to public contracts and requires measures to improve women's entrepreneurship in all sectors.

Technology and complexity

The procurement system is notoriously difficult to navigate. Bidding for public contracts is time and resource intensive, has high transaction costs and can be extremely burdensome, even for large companies.⁹⁵ In Africa, this complexity is exacerbated by highly technical language and the publication of tender opportunities in English. The complexity of the procurement system is aggravated for women, who have limited formal education, limited financial inclusion and limited access to the internet, which is used to advertise contract opportunities, for contractor registration and to access certification schemes for preferential procurement. This has a dissuasive effect on WOBs seeking to access procurement markets,⁹⁶ especially because of the digital gender divide, which explains gender differences in resources and capabilities to access and utilize technology within and between countries, regions, sectors and socio-economic groups.⁹⁷

East African countries have moved towards relying on electronic public procurement systems. For instance, Kenya utilizes an online system where contract opportunities are advertised and suppliers are required to register to participate in the procurement process. Tanzania has a similar system: the Tanzanian National E-procurement system, which lists public contract opportunities, implements bidder registration, and warehouses bidder training courses and manuals. The Ugandan, Ethiopian and Rwandan electronic procurement portals are also very similar in operation.

While electronic procurement has significant benefits,⁹⁸ it can negatively affect (vulnerable) groups with limited access to the internet, preventing them from participating in procurement and in digital services more generally. As of 2021, it was estimated that internet penetration in Africa stood at 39.3 per cent,⁹⁹ although there are disparities between individual countries, even within the same region. For instance, in East Africa, Kenya has an internet penetration of 85.2 per cent, while Tanzania's stands at 36.7 per cent, Uganda's at 39.3 per cent, Rwanda's at 45.1 per cent and Ethiopia's at 17.7 per cent.¹⁰⁰ The low level of penetration in African countries affects underserved rural areas,¹⁰¹ meaning that rural women may struggle to access a technology-based procurement system. This is not to suggest that electronic procurement should be foresworn, as

93 Basheka "Inclusive public procurement", above at note 21 at 103.

94 "The number of tenders in public procurements is increasing" (Swedish Competition Authority press release, 12 December 2019), available at: <<https://www.konkurrensverket.se/en/news/the-number-of-tenders-in-public-procurements-is-increasing/>> (last accessed 29 January 2024); Williams-Elegbe "Equity and inclusion", above at note 29 at 23.

95 Chin *The Power of Procurement*, above at note 4 at 50.

96 Williams-Elegbe "Equity and inclusion", above at note 29 at 23.

97 "Bridging the digital gender divide: Include, upskill, innovate" (2018, OECD), available at: <<https://www.oecd.org/digital/bridging-the-digital-gender-divide.pdf>> (last accessed 29 January 2024).

98 *Government at a Glance* (2017, OECD Publishing) at 176.

99 "Internet penetration in Africa: 2020 – Q1 - March" (2021) *Internet World Statistics*, available at: <<https://www.internetworldstats.com/stats1.htm>> (last accessed 29 January 2024).

100 Ibid.

101 AJ Hoffman and DP de Wet "Broadband internet access for rural Africa: Finding a viable model" (proceedings of the 2nd International Conference on Applied Informatics and Computing Theory, September 2011) 178.

it has integrity and efficiency benefits, but rather underscores the need to pursue digital equity in rural and urban areas.¹⁰²

Participation in procurement is further accompanied by complicated financial criteria, such as the provision of audited financial accounts, and the requirement for business registration, which can be a complex and expensive process.¹⁰³ Research from Kenya highlighted that WOBs struggle to complete tender documents due to their complexity and are often challenged by the short time-lines and unfavourable conditions, like requirements for prior experience.¹⁰⁴ Even in developed countries like the UK, the most reported challenges faced by bidders were prescriptive qualification criteria, poorly written tender specifications and prohibitive resource requirements.¹⁰⁵ Since WOBs are often SMEs, “they retain fewer internal resources and capabilities with which to offset high administrative entrance costs and to engage in the act of supplying to government”.¹⁰⁶

Demand aggregation

Many procurement systems are moving towards demand aggregation or contract “bundling” to increase economies of scale and efficiency. While aggregation assists in getting better terms from the market, it reduces the size and frequency of procurement opportunities.¹⁰⁷ In Ethiopia, Tanzania and Uganda, public agencies are encouraged to aggregate public requirements by combining otherwise separate tender opportunities. This has the unintended consequence of locking WOBs (and SMEs) out of procurement opportunities where they don’t have the capacity to bid for aggregated contracts. Governments must thus consider the effect that such policies may have on smaller contractors and mitigate these effects. In Tanzania, the set-asides for WOBs permit procuring entities to unbundle larger contracts, subject to the regulator’s approval.

Legal and policy barriers

Absence of a legal framework

Rwanda and Ethiopia do not legally provide for the prioritization of WOBs in procurement. Studies have shown that the absence of a legal mandate to prioritize WOBs has a chilling effect on procurement systems that are heavily regulated as a means of preventing corruption.¹⁰⁸ Where procurement systems do not require gender-responsive procurement, public officials may have discretion to determine which outcomes or goals to pursue within the procurement process, which may not favour gender equality.¹⁰⁹

Other evidence suggests that contracting authorities often ignore optional social criteria (such as favouring women) in procurement and restrict their practices to legally mandated criteria.¹¹⁰ Thus, without legal mandates, contracting authorities may not prioritize WOBs and may defer to the

102 L Nyahodza and R Higgs “Towards bridging the digital divide in post-apartheid South Africa: A case of a historically disadvantaged university in Cape Town” (2017) 83/1 *South African Journal of Libraries and Information Science* 39; C Maphuthi and M Manamela “Digital inequality in rural and urban settings: Challenges of education and information in South African youth context” (2018) 15 *Bangladesh e-Journal of Sociology* 186.

103 “Empowering women through public procurement”, above at note 36 at 28.

104 “Kenya’s efforts to empower women”, above at note 44 at 40.

105 K Loader “SME suppliers and the challenge of public procurement: Evidence revealed by a UK government online feedback facility” (2015) 21 *Journal of Purchasing and Supply Management* 103.

106 Orser, Riding and Week “The efficacy of gender-based”, above at note 37 at 496.

107 GW Thomassen et al “SMEs access to public procurement markets and aggregation of demand in the EU” (2014), available at: <<https://ec.europa.eu/docsroom/documents/15459/attachments/1/translations/en/renditions/native>> (last accessed 29 January 2024).

108 Williams-Elegbe “Equity and inclusion”, above at note 29 at 13.

109 SN Nyeck “(Out)bidding women: Public procurement reform, policy diffusion and gender equality in Africa” (2015) 14 *WAGADU: A Transnational Journal of Gender and Women’s Issues* 55.

110 Sarter “The development and implementation”, above at note 17 at 71.

status quo, which favours men-owned businesses.¹¹¹ The existence of an adequate legal and policy framework is thus an important aspect of gender-responsive procurement.¹¹²

Opacity and lack of integration between gender equality frameworks

In many countries there is insufficient integration between gender equality, economic development and public procurement policies. Many countries fail to view procurement through the lens of gender equality, meaning there is little gender mainstreaming in the procurement context beyond set-asides for WOBs. Gender-responsive procurement does not always consider the broader environment of gender discrimination, meaning that structural and cultural issues impelling gender inequality limit the efficacy of gender-responsive procurement measures.

Research on gender-responsive procurement indicates that contracting authorities struggle to prioritize WOBs because of what they consider to be conflicting mandates to prioritize local businesses, not only WOBs.¹¹³ In Rwanda, the gender policy also highlighted the disconnect between WEE and the procurement system. In Tanzania, the National Strategy for Gender Development underscores the imperative for economically empowering women, without linking this to the procurement system or to any actionable measures.¹¹⁴ In most countries, gender-responsive procurement measures are not integrated with policy frameworks on local economic development and gender equality¹¹⁵ and, further, gender policies are often ambiguous, without actionable and measurable steps, thus limiting their impact.¹¹⁶ In countries like the Dominican Republic where there was success in increasing the participation of WOBs in procurement, it was a result of multi-pronged, long term and sustained interventions.¹¹⁷

Cultural and social norms

Gender-based discrimination against women by procurement officials

Many African cultures are patriarchal and women often face a gender penalty, which in the procurement context manifests as a bias against women or a lack of confidence in the competence of WOBs. In some African countries, there is a perception that women business owners are of lesser importance and lack the agency of male business owners.¹¹⁸ In Ethiopia, interviews revealed a belief that women cannot manage businesses or supply quality goods and services, even though there is no empirical evidence for this. The World Bank highlighted that social constraints often condition procurement officials, leading to a biased decision-making process, which can be dangerous when officials exercise their discretion in public procurement.¹¹⁹

Apart from overt discrimination, unconscious bias is a barrier to women's access to procurement opportunities. For instance, there is often an unconscious belief that women do not belong in male-dominated (and often more lucrative) sectors like construction and engineering.¹²⁰

111 Williams-Elegbe "Equity and inclusion", above at note 29 at 29.

112 S Brammer and H Walker "Sustainable procurement in the public sector: An international comparative study" (2011) 31 *International Journal of Operations & Production Management* 452.

113 Williams-Elegbe "Equity and inclusion", above at note 29 at 26.

114 "National strategy for gender development" (2005, Republic of Tanzania Ministry of Community Development, Gender and Children), available at: <https://www.jamii.go.tz/uploads/publications/sw1542104700-Tanzania_-_National_Strategy_for_Gender_Development.pdf> (last accessed 7 February 2024).

115 Williams-Elegbe "Equity and inclusion", above at note 29 at 30.

116 L Mergaert "The reality of gender mainstreaming implementation: The case of the EU research policy" (2012, Radboud Universiteit Nijmegen); A Callerstig "Can public procurement be an instrument for policy learning in gender mainstreaming?" (2014) 18 *Scandinavian Journal of Public Administration* 51.

117 Colman "Women win one in four contracts", above at note 83.

118 TJ Mudau and OS Obadire "The role of patriarchy in family settings and its implications to girls and women in South Africa" (2017) 58 *Journal of Human Ecology* 67.

119 "Towards gender-responsive procurement", above at note 12 at 19.

120 Williams-Elegbe "Equity and inclusion", above at note 29 at 18.

The effect of discrimination against WOBs is that they are often consigned to smaller contracts in service sectors such as cleaning, hospitality and small supplies.¹²¹ Beyond the bias against WOBs, this article has also discussed the mismatch between the sectors in which WOBs participate and the procurement opportunities available; this mismatch may reinforce the status-quo and prevent real change.

Discriminatory customary and inheritance practices

In some African countries, customary practices limit women's rights to inherit, acquire and use property freely. These practices stand in stark opposition to formal legislation and constitutional provisions on inheritance and are problematic, given that many banks in Africa require real assets to be pledged as collateral for business loans. In Kenya, for instance, only 1 per cent of land titles are registered in the names of women alone, while 5 per cent of land titles are held jointly by men and women.¹²² Similarly, in Ethiopia men control land and women gain access to land through their relationship with male relatives; customary practices limit women's rights to land, underpinning the patriarchal system of traditional authority to disadvantage and subordinate women.¹²³ This has severe implications for women entrepreneurs, who are unable to access the land required as collateral for business loans, limiting their ability to grow out of SME status and develop the capacity to obtain larger procurement contracts.

Household dynamics

Household dynamics are often unfavourable to women and impact women's entrepreneurship and ability to participate fully in the economy. Many African women are controlled by their partners, who decide whether a woman entrepreneur can formalize her business or attend training and networking sessions. Research indicates that some men will prevent the formalization of their partner's business, fearing that the growth of their partner's business may "overshadow" them or create a gap between their earnings.¹²⁴

When women are prevented from formalizing their business, they are permanently locked out of the procurement system, which requires business registration as a pre-condition for participation. This means that attempts to address gender inequity in public procurement must be accompanied by measures to ensure women have full agency over business decision-making. In countries where access to government contracts depends on networking, women must compete with men, who may conclude deals out of hours, in bars and hotels. Women with family responsibilities may be unable to participate in these networks, and cultural and religious values may restrict women from socializing, thus limiting access to networks useful for business activities.¹²⁵

Furthermore, where men can control their partners, they may be able to abuse the policy favouring WOBs by using their wives and partners as a front for businesses controlled by them, undermining the impact of gender-responsive schemes. Certification and qualification measures for WOBs must be robust enough to address practices that misrepresent firm ownership and control

121 N Esposito "Spotlight on women owned employer businesses" (2019) *US SBA Office of Advocacy*, available at: <<https://advocacy.sba.gov/wp-content/uploads/2019/03/Small-Business-Facts-Spotlight-on-Women-Owned-Employer-Businesses.pdf>> (last accessed 29 January 2024).

122 "Women's land and property rights in Kenya" (Federation of Women Lawyers), available at: <<https://land.igad.int/index.php/documents-1/countries/kenya/gender-3/625-women-s-land-and-property-rights-in-kenya/file#:~:text=FIDA%2DKenya's%20vision%20is%20to,either%20their%20gender%20or%20sex.&text=FIDA%2DKenya's%20mission%20is%20to,physical%20disability%2C%20and%20religious%20belief>> (last accessed 29 January 2024).

123 HA Tura "A woman's right to and control over rural land in Ethiopia: The law and the practice" (2014) 2 *International Journal of Gender and Women's Studies* 137.

124 N Mori *Women's Entrepreneurship Development in Tanzania: Insights and Recommendations* (2014, International Labour Organization), available at: <http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/publication/wcms_360426.pdf> (last accessed 29 January 2024).

125 Id at 2.

as a way to gain fraudulent access to preferences, reservations and other forms of targeted assistance.¹²⁶ As discussed above, beneficial ownership registries could be used to verify true corporate ownership and eligibility for gender-responsive procurement.¹²⁷ Where men abuse the gender-responsive framework, this may skew statistics, painting an inaccurate picture of the state of women's economic empowerment, possibly leading to a misdirection of state resources.

Additionally, in many African homes, the burden of unpaid household work falls predominantly on women, causing them to be more time-poor compared to men. Research from Tanzania highlighted that women entrepreneurs are required to divide their time and energy between their family and community roles and running their business.¹²⁸ Time spent on unpaid work detracts from time that could be spent on business activities. In Uganda, women spend between 150 and 200 minutes a day doing unpaid labour.¹²⁹ Research from Kenya indicates that women spend 300 minutes a day on unpaid work, while men spend 60 minutes a day.¹³⁰ Even wealthier, urban women who are more likely to be government contractors and who may afford housekeepers or nannies to assist with domestic tasks, still bear the brunt of the mental and emotional labour associated with maintaining a family.

Household dynamics also determine access to resources like education¹³¹ and the author's interviews in Ethiopia revealed that female educational attainment is still relatively low, which stems from a long history of women being denied education. Low educational attainment may deny women the literacy and financial skills needed to run a business, and impedes the ability of women business-owners to navigate the complex procurement system.

Financial challenges

Access to finance

Studies of women's entrepreneurship have revealed that women do not access business finance at the same rate as men. According to the World Bank, female entrepreneurs control fewer assets than men, affecting their capacity to invest in their businesses and access large enough loans.¹³² This barrier is related to the unequal access to landed property, which is often required as collateral for loans in African countries. The International Finance Corporation estimates that there is a USD 287 billion funding gap for women-owned SMEs,¹³³ while the OECD indicates that 70 per cent of women-owned MSMEs in developing countries are unserved or underserved by financial institutions.¹³⁴ The limited access to finance affects women's ability to scale and bid for larger public contracts.¹³⁵

126 "Empowering women through public procurement", above at note 36 at 18.

127 "Beneficial ownership data", above at note 38 at 13.

128 Mori *Women's Entrepreneurship Development*, above at note 124 at 23.

129 Z Nesbitt-Ahmed and HM Apila "Unpaid care work programme: Uganda country progress report 2012–2014" (Institute of Development Studies evidence report no 126, 2015), available at: <http://archive.ids.ac.uk/inter_eldis/unpaid-care-work/country-profiles/uganda.html> (last accessed 29 January 2024).

130 "Addressing unpaid care and domestic work for a gender-equal and inclusive Kenya" (Oxfam policy briefing note, 2021), available at: <<https://policy-practice.oxfam.org/resources/addressing-unpaid-care-and-domestic-work-for-a-gender-equal-and-inclusive-kenya-621179/>> (last accessed 29 January 2024).

131 M Favara "Do dreams come true? Aspirations and educational attainments of Ethiopian boys and girls" (2017) 26 *Journal of African Economies* 561, available at: <<https://doi.org/10.1093/jae/ejx018>> (last accessed 29 January 2024); T Woldehanna, A Mekonnen and N Jones "Education choices in Ethiopia: What determines whether poor households send their children to school?" (2008) 17 *Ethiopian Journal of Economics* 20.

132 "Towards gender-responsive procurement", above at note 12 at 28.

133 "Women owned SMEs: A business opportunity for financial institutions" (2014, International Finance Corporation), available at: <<https://www.ifc.org/wps/wcm/connect/44b004b2-ed46-48fc-8ade-aa0f485069a1/WomenOwnedSMEs+Report-Final.pdf?MOD=AJPERES&CVID=kiiZZDZ>> (last accessed 29 January 2024).

134 "Aid focused on gender equality and women's empowerment: A snapshot of current funding and trends over time in support of the implementation of the Beijing Declaration and Platform for Action" (2020, OECD), available at: <<https://www.oecd.org/development/gender-development/Aid-Focussed-on-Gender-Equality-and-Women-s-Empowerment-2020.pdf>> (last accessed 29 January 2024).

135 "Towards gender-responsive procurement", above at note 12 at 16.

As discussed above, women's access to land is compromised by customary practices; even without this barrier, women fall behind in accessing finance. Investors and banks in a patriarchal society are less willing to bet on women entrepreneurs because they doubt their ability to succeed.¹³⁶ In addition, there are often limited financial services targeting WOBs¹³⁷ and, where these services do exist, they are not always appropriate for the needs of WOBs,¹³⁸ limiting WOBs' ability to scale and grow.

Unfavourable financial terms

Procurement contracts involve higher proposal and compliance costs than commercial contracts,¹³⁹ placing WOBs at a disadvantage because they have fewer resources to draw upon than other businesses. Research on Kenya's AGPO scheme found that very few bidders from the target groups participate in the procurement process, partly because they find it hard to raise funds to service the tenders.¹⁴⁰ In Kenya, WOBs do not bid for high-value contracts because of financial issues, such as the lack of capital needed to fulfil those contracts and the delays in payment that they are unable to absorb.¹⁴¹ In addition, fees for entities wishing to participate in the AGPO scheme act as a deterrent for WOBs, where they are unable to afford the fees and there are no guarantees that a submitted bid will result in a contract award.

Another financial challenge peculiar to procurement are the government payment terms of 30–60 days, which are a barrier for WOBs that may not have the liquidity to absorb delayed payments.¹⁴² Delayed and late payments prejudice WOBs with lower reserves of capital and less bargaining power to negotiate interest on late payments.

Corruption

Bribery and corruption

The gendered impact of corruption on women has only recently begun to receive attention from academics,¹⁴³ policymakers and international organizations.¹⁴⁴ In public procurement, corruption affects the competitiveness of the procurement system, reduces trust, undermines integrity, and rewards malfeasance and unethical conduct.

Research has revealed that procurement corruption is a barrier to women's participation in public procurement.¹⁴⁵ In Tanzania, interviews with the author highlighted that, while there are many

136 E Chinomona and ET Maziriri "Women in action: Challenges facing women entrepreneurs in the Gauteng Province of South Africa" (2015) 14 *International Business & Economics Research Journal* 835.

137 "Empowering women through public procurement", above at note 36 at 48.

138 "Tanzania narrows the financial inclusion gender gap: A case study of policy change to support women's financial inclusion" (2016, Alliance for Financial Inclusion), available at: <<https://www.afi-global.org/sites/default/files/publications/2016-08/2016-casestudy-btg-tanzania.pdf>> (last accessed 29 January 2024).

139 "Empowering women through public procurement", above at note 36 at 25.

140 Nganga "Kenya: Assessment", above at note 52 at 56.

141 L Obiri "Consultancy on the assessment of the uptake of 30% public procurement business opportunities for women, youth and persons with disability at the county level and availability of business development" (report submitted to UN Women, 2016), available at: <<http://genderinkenya.org/wp-content/uploads/2017/12/UN-Women-Report-on-AGPO.pdf>> (last accessed 29 January 2024).

142 "Empowering women through public procurement and enabling inclusive growth" (2021, UN Women and Open Contracting Partnership), available at: <<https://www.unwomen.org/en/digital-library/publications/2021/11/empowering-women-through-public-procurement-and-enabling-inclusive-growth>> (last accessed 29 January 2024).

143 M Malo and BN Ochoa "Corruption in public procurement is a women's rights issue too" (8 December 2022) *World Bank blogs*, available at: <<https://blogs.worldbank.org/governance/corruption-public-procurement-womens-rights-issue-too>> (last accessed 29 January 2024).

144 *The Time is Now: Addressing the Gender Dimensions of Corruption* (2020, UN Office on Drugs and Crime), available at: <https://www.unodc.org/documents/corruption/Publications/2020/THE_TIME_IS_NOW_2020_12_08.pdf> (last accessed 29 January 2024).

145 Williams-Elegbe "Equity and inclusion", above at note 29 at 20.

WOBs in male-dominated sectors such as construction, they often do not participate in procurement because of perceived inequities in the system.¹⁴⁶ In Kenya, it was reported that fraudulent collusion significantly affects WOBs' ability to participate in the AGPO programme.¹⁴⁷ In countries with high levels of procurement corruption, some women refuse to pay the bribes, cannot afford them or do not trust that they will be able to enforce the corrupt transaction, especially if they are not regular participants in the procurement market.¹⁴⁸

Sexual corruption

Sexual corruption, which can include sexual extortion or "sextortion" is also a barrier to women's participation in public procurement.¹⁴⁹ Interviews revealed that WOBs are often asked to provide sexual favours to obtain a public contract.¹⁵⁰ In Kenya and Ethiopia, interviews revealed that there is a perception that women who obtain public contracts have been sexually compromised and, as such, WOBs do not publicize contract awards to avoid the stigma associated with procurement.¹⁵¹

Key recommendations for improving gender-responsive procurement

This section provides recommendations to address the identified barriers and create an enabling environment for gender-responsive procurement. Gender-responsive procurement cannot be addressed in isolation from the challenges facing women entrepreneurs, and "actions taken at the procurement level alone will not suffice to fully empower women unless more radical work is done to abolish those institutional, economic, and societal structural barriers".¹⁵²

Address structural and systemic barriers

The structural and systemic issues that affect WOBs' participation in procurement can be addressed in different ways. Contracting authorities must include gender considerations in procurement planning phases, as planning provides opportunities for gender inclusion even in the absence of legal mandates. The complexity of the procurement system may be addressed through increased simplification of bid requirements and documentation, while the over-reliance on technology and the lack of information on procurement opportunities can be addressed by using diverse platforms to disseminate procurement information, which may include content in local language radio and newspapers.

The absence of gender disaggregated data, which prevents regulators from understanding WOBs' participation in procurement and the sectors in which they are underrepresented, can be addressed by requiring contracting authorities to collect gender-disaggregated data on bidders and contractors. To address demand aggregation, procurement regulators should require that aggregated contracts include subcontracting to WOBs or require that, under certain financial thresholds, aggregated contracts must be awarded to bidders from the preferred groups.

Address absence of a legal framework and policy misalignment

Countries that do not have legal requirements for gender-responsive procurement must pass laws requiring the prioritization of WOBs in procurement. In addition, the operational environment must address registration and certification programmes for WOBs. These should encompass

146 Copies on file with the author.

147 "Kenya's efforts to empower women", above at note 44 at 18.

148 Williams-Elegbe "Equity and inclusion", above at note 29 at 21.

149 Id at 20. See also, *Breaking the Silence around Sextortion: The Links between Power, Sex and Corruption* (2020, Transparency International), available at: <https://images.transparencycdn.org/images/2020_Report_Breaking_SilenceAroundSextortion_English.pdf> (last accessed 29 January 2024).

150 Copies on file with the author.

151 Copies on file with the author.

152 "Towards gender-responsive procurement", above at note 12 at 18.

inclusive definitions of WOBs and the supporting infrastructure, such as up-to-date contractor databases. There must also be guidance to procuring authorities on how to operationalize preferences for WOBs.

Addressing legal barriers without creating the needed infrastructure is often a reason why gender-responsive mechanisms are not very successful. Further, there must be integration of gender equality policies and gender-responsive procurement, making equality one of the benchmarks against which the procurement system is assessed.

Change cultural and societal biases

Cultural and societal barriers to women's economic empowerment and participation in procurement may be addressed through legislation and education. It is recommended that national legislatures prohibit discriminatory property practices and strengthen enforcement where such legislation exists. In the Dominican Republic, the gender-responsive procurement framework integrated measures to limit gender bias by anonymizing bids and selecting the winning tender through a random selection. Discriminatory social and cultural practices against women may be dismantled primarily through education and raising awareness of their impact on both women and men.

Societal biases manifest in the kinds of sectors that are regarded as "male-dominated". There must be measures to increase women's entrepreneurship in these sectors. Boosting the pipeline of WOBs in all sectors is important, as it is futile to mandate quotas or preferences for WOBs if such businesses do not exist.

Issues such as the burden of unpaid work, which limits women's ability to focus on business growth, can be addressed through the provision of better public services and infrastructure, low-cost childcare, better access to labour-saving devices, shifting perceptions about care work and the provision of decent work for women.¹⁵³

Address financial barriers

Financial barriers could be addressed by removing bid guarantees and providing for advance payment and prompt payment for WOBs.¹⁵⁴ In Tanzania, tender securities are not required from WOBs and other members of the special groups, and contract payments to WOBs are required to be made in a timely manner, while advance payments may be granted to facilitate contract execution. Similarly, in Ethiopia, SMEs are exempted from furnishing bid and performance securities. Prompt payment terms should be monitored through the submission of quarterly payment performance reports by procuring entities. In addition, procurement regulators should initiate a dialogue with the financial services sector to consider ways to support WOBs better, based on an assessment of the areas in which women are underserved. This could be done through government guarantees for credit offered to WOBs, as well as the development of financial products that address the challenges faced by women entrepreneurs.

Mitigate public procurement corruption

Many countries struggle with procurement corruption¹⁵⁵ and it is suggested that governments institute ethical training in the public sector and create ethical incentives to provide procurement

153 M O'Neill, A Vargas and D Chopra "Unpaid care and women's empowerment: Lessons from research and practice" (International Development Research Centre policy brief, 2017), available at: <<http://hdl.handle.net/10625/56369>> (last accessed 29 January 2024).

154 "Towards gender-responsive procurement", above at note 12 at 60.

155 S Williams-Elegbe "Systemic corruption and public procurement in developing countries: Are there any solutions?" (2018) 18 *Journal of Public Procurement* 1317; G Quinot et al "Emergency procurement and responses to

officials with the tools and motivation to make ethical decisions. In addition, the justice system, procurement regulators and supreme audit institutions must hold procurement officials accountable when there is a breach of procurement rules.

Examples of accountability can be drawn from South Africa, where personal debt orders are utilized against government officials when the Auditor-General finds that public funds have been lost through the procurement system, making officials personally liable for the loss of public funds.¹⁵⁶ Procurement officials in South Africa have also been made accountable through personal cost orders, where a public official is made liable for a proportion of the government's legal fees (costs) where a procurement contract is challenged in court, and there is evidence that the public official exercised gross negligence, bad faith and culpability in the award of the public contract.¹⁵⁷

Create an enabling environment for gender-responsive procurement

Capacity-building for the public and private sector

Improving the capacity of procurement officials to implement gender-responsive procurement is important to its success. It is suggested that regulators map existing public sector competencies in relation to gender-responsive procurement and provide capacity-building for officials based on this gap. Procurement officials require training on how to maximize legal preferences and include WOBs in public sector supply chains.

WOBs also require training to access public procurement markets. Research has indicated that WOBs succeeded in procurement when they had access to capacity development to navigate the procurement terrain.¹⁵⁸ However, procurement authorities in Africa often report a lack of funds for capacity-building for both WOBs and procurement officers.¹⁵⁹

In Tanzania, business development training has been integrated into the process of certification for WOBs. The Dominican Republic successfully integrated capacity-building for WOBs into its gender-responsive procurement, making capacity-building a mandatory component of its gender-responsive framework, thereby ensuring that WOBs had the skills and knowledge to participate in the procurement system and increase their chances of success. Academic and vocational institutions need to address the development of entrepreneurial capacity in girls and young women, to close the entrepreneurship gap between women and men.

Advocacy and awareness

There is limited awareness of the necessity for gender-responsive procurement and the procurement opportunities available to WOBs. Gender equality agencies and procurement regulators must develop an advocacy programme to address the lack of awareness on the part of contracting authorities and the public, as well as a programme that provides women business groups from different sectors with information about gender-responsive schemes and procurement opportunities.

COVID-19 in Africa: The contrasting cases of South Africa and Nigeria" in S Arrowsmith et al (eds) *Public Procurement in (a) Crisis: Global Lessons from the COVID-19 Pandemic* (2021, Hart) 525.

156 Williams-Elegbe "Equity and inclusion", above at note 29 at 18.

157 *Westwood Insurance Brokers (Pty) Ltd v Ethekwini Municipality and Others* (8221/16) [2017] ZAKZDHC 15 (5 April 2017); *Black Sash Trust v Minister of Social Development and Others (Freedom Under Law Intervening)* (CCT48/17) [2018] ZACC 36, 2018 (12) BCLR 1472 (CC) (27 September 2018).

158 "New mindset, increased profits: Lessons from an innovative entrepreneurial training in Togo" (2018, World Bank), available at: <<https://www.worldbank.org/en/news/feature/2018/01/18/new-mindset-increased-profits-lessons-from-an-innovative-entrepreneurial-training-in-togo#:~:text=Training%20helped%20women%20the%20most&text=Personal%20initiative%20training%20led%20to%20more%20than%20just%20a%20boost,in%20the%20Business%20Edge%20training>> (last accessed 6 February 2024).

159 Nganga "Kenya: Assessment", above at note 52 at 73.

Conclusion

This article has examined the relationship between public procurement, WEE and gender equality, underscoring the importance of integrating WOBs into public sector supply chains. Gender-responsive procurement is an important channel for WEE, supporting several SDGs, including ending poverty, ending hunger, decent work, and improved health and education outcomes.

The article has provided a synopsis of the gender-responsive procurement approaches in Kenya, Tanzania, Uganda, Rwanda, Ethiopia, the USA and the Dominican Republic. It further revealed the legal, policy and cultural barriers that limit women's participation in the procurement systems of these countries, illuminating the different ways in which legal and policy choices as well as cultural norms and procurement practices converge to hinder women's access to procurement markets. The article concluded with recommendations to address these barriers and conveyed that, while WOBs face systemic, legal, cultural and financial barriers to participating in procurement markets, these barriers are not insurmountable, and governments must be willing to commit resources to addressing the barriers that prevent WOBs from participating fully in procurement systems and in the formal economy.

It is suggested that, as African countries work to improve WOBs' access to procurement markets, they should do so with a view ultimately to preferring gender-responsive enterprises in public procurement. Prioritizing gender-responsive enterprises will lead to increased gender equality as it will compel structural changes in businesses and expedite WEE, since it focuses on providing benefits to all women, not just WOBs. Such an approach may address some of the challenges of the current focus on contract awards to WOBs, such as the abuse of the qualifying criteria for WOBs through tokenism, institutional reluctance to prioritize WOBs, bias against WOBs and policy incoherence, but this will require countries to do more to promote gender equality in businesses for it to succeed.¹⁶⁰

The COVID-19 pandemic exacerbated existing gender inequalities,¹⁶¹ increasing the time needed to close the gender gap¹⁶² and erasing gains made towards gender equality.¹⁶³ This means that countries must use gender-responsive strategies in recovery efforts¹⁶⁴ to accelerate WEE and gender equality, with the benefits of job creation, economic growth and poverty reduction.¹⁶⁵

Competing interests. None

160 CS Starnski and LS Son Hing "Gender inequalities in the workplace: The effects of organizational structures, processes, practices, and decision makers' sexism" (2015) 16 *Front Psychology* 400.

161 "COVID-19: A gender lens: Protecting sexual and reproductive health and rights and promoting gender equality" (UN Population Fund technical brief, March 2020), available at: <https://www.unfpa.org/sites/default/files/resource-pdf/COVID-19_A_Gender_Lens_Guidance_Note.pdf> (last accessed 29 January 2024); "AU guidelines on gender-responsive responses to COVID-19" (2020, African Union), available at: <<https://au.int/en/documents/20200603/au-guidelines-gender-responsive-responses-covid-19>> (last accessed 29 January 2024).

162 *Global Gender Gap Report* (2021, World Economic Forum), available at: <<https://www.weforum.org/reports/global-gender-gap-report-2021>> (last accessed 29 January 2024).

163 "Women at work in G20 countries: Progress and policy action since 2019" (paper prepared for the G20 Employment Working Group, 2020), available at: <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_756334.pdf> (last accessed 29 January 2024).

164 *Government at a Glance*, above at note 1 at 54; Martin-Ortega and O'Brien *Public Procurement*, above at note 3. For the perspective of the African Union, see generally "AU guidelines on gender-responsive responses", above at note 161. See also "Towards gender-responsive procurement", above at note 12 at 14.

165 S Vyas-Doorgapersad and A Kinoti "Gender-based public procurement practices in Kenya and South Africa" (2015) 8 *African Journal of Public Affairs* 96.