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# Republic of South Sudan Country Integrated Fiduciary Assessment Southern Sudan

Volume 3: South Sudan Procurement Assessment Report (SSPAR)

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## Currency and Exchange Rates

Currency unit = South Sudan Pound (SDG)

US\$ 1 = SDG 3.5 (As of September 5, 2011)

Government Fiscal Year (FY) = January 1 – December 31

## List of Abbreviations

CIFA	Country Integrated Fiduciary Assessment
CPAR	Country Procurement Assessment Report
GRSS	Government of the Republic of South Sudan
IFC	International Finance Corporation
IPPDR	Interim Public Procurement and Disposal Regulation
MoFEP	Ministry of Finance and Economic Planning
NBGS	Northern Bahr el Ghazal State
NGO	non-government organization
OECD-DAC	Organisation of Economic Cooperation and Development - Development Assistance Committee
PEFA	Public Expenditure and Financial Accountability
PFM	public finance management
PPU	Procurement Policy Unit
SSIFA	South Sudan Integrated Fiduciary Assessment
SSLA	Southern Sudan Legislative Assembly
SSPAR	South Sudan Procurement Assessment Report
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
USD	US dollar

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## Preface

Following a request by the Government of South Sudan, the World Bank and other development partners joined with the government to undertake the South Sudan Integrated Fiduciary Assessment during 2011. The integrated assessment was in two parts: (i) the assessment of Public Expenditure and Financial Accountability (PEFA), and (ii) this “South Sudan Procurement Assessment Report.” The report takes stock of developments in public procurement to date and recommends further actions needed to improve the efficiency, economy, and transparency of the system.

This report is the result of a data collection and assessment mission in South Sudan undertaken between the 17<sup>th</sup> and 24<sup>th</sup> of June 2011 by independent consultants. Data was collected at the level of the Government of South Sudan (GoSS) as well as at the state government level from the four states of Jonglei, Northern Bahr el Gazhal, Unity, and Western Equatoria. The consultants worked closely with the World Bank team and were facilitated by a Procurement Reform Task Force put together by the government. The list of task force members is attached as Annex A. The task force provided its input at the launch workshop, at the debriefing meeting following the data collection and assessment mission, and again at the validation workshop.

This “South Sudan Procurement Assessment Report” is Volume 3 of the South Sudan Integrated Fiduciary Assessment report series. This report has three parts: an Executive Summary; the main report; and three annexes. The main report contains a brief introduction, an outline of the assessment methodology, a stock-taking of achievements made, the study assessments, and a recommended action plan.

## Acknowledgements

The World Bank Procurement Assessment Team wishes to acknowledge the extensive cooperation and ready support received from officials and staff of the South Sudan ministries, departments, and agencies, from private companies, and from NGOs and professional organizations interviewed during the assessment. The team highly appreciates the contributions received toward the cost of the study from the African Development Bank as well as the cooperation, comments, and participation of the UNDP, USAID, and the Joint Donor Team in South Sudan.

## The Procurement Assessment Team

The South Sudan Procurement Assessment Team comprised Task Team Leader Mr. Richard Olowo, Mr. Prosper Nindorera, Mr. Anjani Kumar, Ms. Grace Tabu Felix, and Ms Dorothy Akikoli; peer reviewers Mr. Sylvester Kofi Awanyo and Mr. Imad Saleh (World Bank); and a team of consultants from Ramboll Management Consulting, Denmark, led by Mr. Anders Kragh Bingen and including Assistant Team Leader Xavier Le Den and legal experts Mr. Soren Staugaard Nielsen and Mr. Casper Schmidt.



# Executive Summary

## Background

The goal of the South Sudan Procurement Assessment is to achieve a sustained improvement of the public procurement system and practices throughout South Sudan. The objective is to take stock of the progress of the development of the system, determine the procurement risks to public funds, and recommend actions for improvement. Recommendations focus on capacity and institutional improvements needed to ensure internationally acceptable procurement standards in budget execution. The procurement assessment has been undertaken alongside the Public Expenditure and Financial Accountability assessment, both comprising the two parts of the South Sudan Integrated Fiduciary Assessment (SSIFA).

In order to provide a benchmark, the South Sudan Procurement Assessment applies the methodology of the OECD-Development Assistance Committee (DAC) for assessing national procurement systems as an overall framework. This OECD-DAC methodology is a good tool for measuring a country's performance against international best practices in procurement. The tool uses four pillars to assess the national procurement system: (i) legislative and regulatory framework; (ii) institutional framework and management capacity; (iii) procurement operations and market practices; and (iv) transparency and integrity of the procurement system. However, only the baseline indicators were applied in way that was reasonably comprehensive, whereas the assessment of the compliance and performance indicators was conducted only to the extent that the necessary information could be obtained through interviews. This was due to the serious challenges that were anticipated in obtaining procurement data from the nascent South Sudan public procurement system.

## Overall Findings and Recommendations

### Legislative and Regulatory Framework

#### *Key issues*

There are challenges to the authority of the current legal framework for South Sudan's procurement system, which is based on the Interim Public Procurement and Disposal Regulations (IPPDR) of 2006. These interim regulations were adopted by the Council of Ministers, issued by the Minister of Finance on June 29, 2006, and decreed by Presidential Order on August 29, 2007. In addition, a circular letter was issued by the Ministry of Finance and Economic Planning (MoFEP), dated April 12, 2011, requiring all public funds to be spent in compliance with the IPPDR, was issued to counter the problems caused by the IPPDR's lack of legislative authority. However, the IPPDR doesn't support a principal act of the Southern Sudan Legislative Assembly (SSLA), and this creates doubts over the exact legal status of the IPPDR.

Further, the IPPDR has a number of inherent shortcomings, including ambiguous rules against the splitting of contracts and for calculating contract values; inadequate rules for government-owned enterprises, and an inadequate complaints review procedure. However, the IPPDR is only an “interim” set of regulations, meaning that it provides for a transitional procurement regime in anticipation of a new legal framework for procurement. During the data-collection phase of this procurement assessment, USAID had provided a consultant in the central government’s MoFEP, who was preparing draft procurement legislation. The Draft Bill for Public Procurement is now being processed for submission to the SSLA for approval to become law. The South Sudan Procurement Assessment mission was given the opportunity to review the draft bill, and based on that the mission formulated a number of comments and suggestions, which are included in this report.

Many public entities failed to apply the regulations of IPPDR of the GoSS/GRSS<sup>1</sup> in their procurement activities, and instead invariably used the direct contracting method. In fact, some of the public entities interviewed during the mission were unaware of the existence of the IPPDR, while others applied the Government of Sudan (Government of National Unity at the time) procedures.

### ***Key Recommendations***

MoFEP needs to implement the following actions in the short term--within the first year of the reform program--in order to provide a legal foundation for the South Sudan procurement system.

- *Strengthen the Procurement Reform Task Force to assist MoFEP in overseeing the reviewing and consideration of the public procurement and asset disposal bill and follow up its enactment into law as well as monitor its implementation.*
- *Enact a public procurement and asset disposal law based on the UNCITRAL model law.*
- *Issue procurement regulations and standard bidding documents to make the law operational.*

## **Institutional Framework and Management Capacity**

### ***Key issues***

Efforts are being made to train procurement staff, but a comprehensive training and capacity-building strategy in the field of procurement is missing. Decisions regarding recruitment and training are taken on a case-by-case basis, guided by short-term needs. The Procurement Policy Unit (PPU) created under the IPPDR lacks the capacity to exercise its statutory role, despite significant efforts to fulfill its functions. The functions of the PPU include monitoring public procurement, providing advice to contracting entities, and providing tools and documents to help train the implementing staff and develop procurement capacity.

The PPU does not have adequate levels of independence and authority to exercise its functions and implement the procedures defined in the IPPDR. As a result, the PPU has difficulty performing its

<sup>1</sup> On attaining independence in July 2011, the national government was renamed the Government of the Republic of South Sudan (GRSS); references in this report to the present national government and its future activity therefore use the term GRSS, while references to the assessment period and earlier generally use the term GoSS.

statutory functions, and there is no effective normative/regulatory body in MoFEP. Further, the PPU lacks the needed information-gathering tools and resources to monitor procurement. This is exacerbated by an ambiguous legislative and regulatory framework, which does not establish and assign normative/regulatory functions and define clear procedures.

Capability in processing procurement has been improving since 2005, but there is room for further improvement. The procuring entities and the PPU rely on a limited number of senior staff possessing the knowledge, skills, and experience to effectively exercise the procurement functions. The junior or less experienced staff have limited public procurement knowledge and skills. Moreover, due to the loose application of the rules set in the IPPDR, all steps of the procurement process contain weaknesses. The bid openings, evaluations, and award processes are subject to all kinds of dubious practices and irregularities. In this context, single-sourcing remains a widely used, if not dominant, procurement method, regardless of the amount of the contract. Value for money seems not to be achieved.

Procurement plans, when available, are hardly used as effective planning and management tools. In practice, it is unclear how the availability of funds for appropriations is being checked. Payment delays due to cash flow problems are the norm and can exceed several months. In terms of contract management, all interviewees acknowledge that capacities are low and there are no clearly defined procedures for undertaking contract management responsibilities. Contract supervision and administration are assigned on a case-by-case basis, capabilities are lacking if not nonexistent, and cases of mismanagement are frequent. There is no established practice for the quality control of the works, goods, or services delivered. Certificates of completion are used as requests for payment, but the issuing of completion reports is not a common practice.

### ***Key recommendations***

The following recommended actions are dependent on the creation of a functional procurement oversight body, and effectively carrying them out will require a public procurement and asset disposal law to be in place. Therefore, these actions are continuous over the short to medium to long term.

- *Create a functional procurement oversight body with adequate capacity and independence.*
- *Institutionalize procurement planning as part of budget preparation and execution by ministries, departments, and agencies.*
- *Develop a central procurement information and tracking system.*
- *Prepare and implement a procurement capacity-building strategy at the GRSS level.*

## **Procurement Operations and Market Practices**

### ***Key issues***

The most important barriers to private-sector participation in public procurement are the lack of a well functioning financial system, underdeveloped private-sector competencies, and an insufficient legislative framework to ensure positive business development.

The nascent private sector of South Sudan is still dominated by traders focusing on short-term profits and lacking business and management expertise. The legal framework for the private sector is not yet satisfactory, and the legislation that has been passed is yet to be implemented.

Poor infrastructure and complex and unclear import regulation and customs systems result in high and non-transparent transportation costs and unpredictable shipping times.

#### ***Key recommendation***

To have a functional procurement system, the private sector must be vibrant; therefore, the action recommended here needs to be implemented on a continuing basis.

- *Facilitate private-sector participation in public procurement.*

### **Integrity and Transparency of the Public Procurement System**

#### ***Key issues***

Progress has been made in terms of strengthening the oversight and integrity of the procurement system in South Sudan. The establishment of the PPU, an Audit Chamber, the South Sudan Anti-Corruption Commission (hereafter the Anti-Corruption Commission) and a relatively vibrant civil society are all good indications that things are moving in the right direction.

Nevertheless, both the oversight and the integrity of the procurement system in South Sudan are very weak. It is clear that there is no internal functioning or external control mechanism at this stage, and internal control units have yet to be established. The Audit Chamber is still finding its feet and building its capacity, and so far no actual audit reports have been published.

The IPPDR provides a complaints handling procedure with timeframes –albeit they are long timeframes--through the head of the procuring entity and the PPU. In practice, however, no complaints are filed, trust in the complaints handling mechanism is very low, and the mechanism has little transparency.

Corruption remains a huge challenge in South Sudan, despite the good intentions of the Anti-Corruption Commission. The commission has a very limited mandate, and it cannot take any cases to court.

#### ***Key recommendations***

The following recommended actions, if implemented, could yield low-hanging fruit, but they would require the commitment of the Audit Chamber and the Anti-Corruption Commission to undertake them in the short term.

- *Strengthen the Audit Chamber to conduct procurement audits.*
- *Strengthen the capacity for procurement investigations needed to resolve bidder complaints.*
- *Endow the internal audit units with the capacity to inspect procurement processes and provide real-time advice for improvement.*
- *Establish formal and actual interagency cooperation among accountability institutions in addressing corruption in procurement.*

## Findings at the State Level

### ***Key issues***

Procurement operations at the state level were largely in a waiting position until the formal independence of South Sudan on July 9, 2011. Progress has been made since the targeted states have all established procurement units in their finance ministries, which are ready to operate as soon as their tasks are specified and their mandates are defined. However, at the time of the assessment, it was unclear what the specific tasks of these procurement units should be, and they were still relying considerably on the guidance and operation of GoSS. Furthermore, it is clear that the identified staff in the procurement units often have very little, if any, actual procurement experience. Consequently, there is a definite need to build the capacity of the designated procurement staff as soon as possible.

### ***Key recommendation***

As more and more funds are channeled to states and counties to deliver services, it is recommended that the action below be immediately implemented. However, the institutional arrangement for procurement at the subnational level would have to be clarified in the law.

- *Provide for the institutional arrangements for state and local level procurement in the public procurement and asset disposal bill, and*
- *Prepare and implement a strategy for building procurement capacity at the state and county levels.*

## Procurement Reform Action Plan

The table below outlines the sequence of the Procurement Reform Action Plan that this report recommends to improve procurement performance in South Sudan (the action plan is discussed in detail in Chapter 6). It also illustrated a suggested schedule for the plan covering the short, medium, and long term, with moderate priority actions highlighted in yellow and high priority actions in red.

### Timing and sequencing of Procurement Reform Action Plan

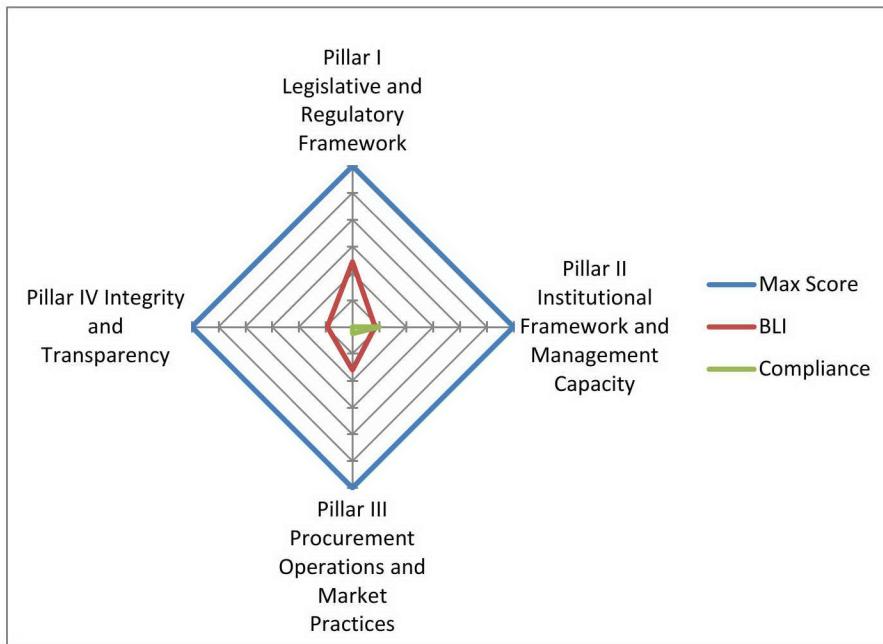
Recommendation	2011	2012	2013	2014
1. Strengthen the Procurement Reform Task Force.		Red	Red	
2. Issue procurement legislation and supporting documents.		Red		
3. Ensure adequate procurement planning.		Yellow	Yellow	
4. Clarify the role and strengthen the capacities of the PPU.		Red	Red	Red
5. Develop a central procurement information and monitoring system.		White	Red	Red
6. Ensure that procuring entities at the GRSS level have sufficient capacities.			Red	Red
7. Ensure that procuring entities at the state and country levels have sufficient capacities.				Yellow
8. Encourage the participation of businesses by creating a business-friendly environment for procurement.			Yellow	Yellow
9. Introduce procedural procurement checks in the Audit Chamber.			Red	Red
10. Institute procurement investigations in the South Sudan Anti-Corruption Commission.			Red	Red
11. Enable the internal control mechanism to become operational.			Yellow	Yellow
12. Establish a formalized inter-agency cooperation among accountability institutions in procurement.			White	Red
13 Strengthen PPUs' (or their successors') independence and role in complaints handling and strengthen the South Sudan Anti-Corruption Commission to enable it to review appeals by bidders.		Red	Red	Red



### Summary of Procurement Ratings

The ratings in this procurement assessment are numerical, ranging from 0 to 3.0 for two sets of indicators: (i) the baseline indicators, which present a snapshot comparison of the systems in place against international standards; here, Pillar 1, Legislative and Regulatory Framework, scores highest; and (ii) compliance and performance indicators, which measure the performance of the system in place in actual daily operations. Compliance rates even lower than the baseline indicator ratings, an example being the noncompliance that was identified in regard to the application of the IPPDR (as represented under Pillar 1).

The cobweb chart below summarizes the assessment. The score at the center is zero and increases toward the outside (blue line, for maximum score) in increments of 0.5, ending at 3.0.



### **Pillar 1: Legislative and regulatory framework**

The assessment arrived at a *baseline indicator rating* of 1.2 (i.e. 40 percent of maximum score), and a *compliance rating* of zero. IPDDR is a valid starting point as a legal framework, but supporting documents are lacking and processes and procedures are not clearly defined. Most of the procedures stipulated in the IPDDR are not followed in practice.

### **Pillar 2: Institutional framework and management capacity**

The assessment arrived at a *baseline indicator rating* of 0.4 (i.e., 13.8 percent of maximum score), and a *compliance rating* of 0.5. The financial management and the capacity and set-up of key institutions for procurement operations are not well established and are considered to be poor. The slightly higher rating for the compliance indicator is explained by the partial adherence to procurement planning exercises and the functions handled by procurement institutions.

### **Pillar 3: Procurement operations and market practices**

The assessment arrived at a *baseline indicator rating* of 0.8 and a *compliance rating* of 0.1. Dialogue takes place between the public and private sector in South Sudan. The Chamber of Commerce has been established and is operational. However, the private sector faces considerable constraints, such as difficult access to credit. Also, the procedures and processes in procurement operations are not well established or disseminated. The compliance score reflects issues such as shortcomings in procurement files and in the handling of the procedures and the informal delegation of authority. In general, the private sector is very immature and underdeveloped in terms of meeting the demands of

the public sector. On the positive side, the private sector has participated in discussions concerning the relevant legislation.

#### **Pillar 4: Integrity and transparency**

The assessment arrived at a *baseline indicator rating of 0.5* and a *compliance rating of 0*. Control mechanisms have not been effectively established. The appeals system is only partially established, and access to procurement information can be difficult to come by. The fight against corruption faces many obstacles. On the positive side, many of the required institutions, such as the Audit Chamber and the Anti-Corruption Commission, have been established and are on their way to becoming operational and effective. The compliance score confirms that even though institutions and initiatives have been formally established, oversight, integrity, and accountability measures are still at a low level.

### **Risk Assessment**

The risk that funds are not being used for their intended purpose, are not achieving value for money and/or are not properly accounted for has been assessed. The risk is both (i) to those providing the funds, which in the case of South Sudan means domestic and external taxpayers, the latter mainly comprising the residents of countries funding donor agencies and international financial institutions; and (ii) to the recipients of the public services, not all of whom are taxpayers, who may suffer if services are not delivered as expected; for example, clean water and sanitation not being provided as expected due to something going wrong in procurement, to the detriment of peoples' health and thus their livelihoods.

*The public procurement system is not functioning in a way to ensure value for money.* Procurement is prone to corruption, and indeed instances of corruption have occurred, facilitated by the weaknesses in the system. The regulations of IPPDR, which stipulate open competition as the preferred procurement modality, are not complied with; single sourcing is the prevalent modality. The IPPDR was supposed to be superseded by a procurement law consistent with international standards and providing for a legal authority to perform the procurement oversight function. A law has been drafted, after years of delay, and is now being finalized for presentation to the SSLA, but it has yet to be enacted. The system is non-transparent in that information on procurement operations is unavailable and an independent complaints mechanism is lacking. Procurement capacity is improving, assisted by donor-supported training programs, but it is still weak.

*Procurement risk to public funds is therefore rated as **high**. Risk mitigation measures are of high priority and should include:*

- Enacting the draft procurement law and, simultaneously, drafting supporting regulations;
- On the basis of the above, strengthening the procurement oversight functions and the institutional and managerial frameworks in procurement entities;
- On the basis of the above, the procurement regulatory body and procuring entities collaboratively designing a system for collating and publicizing data on procurement operations;

- Establishing an independent complaints mechanism; and
- Strengthening the function of and cooperation among the accountability institutions in tackling fraud and corruption in public procurement

These recommendations are already receiving government attention, although implementation is seriously hampered by lack of capacity. The World Bank and other development partners must continue to support GRSS to implement these recommendations by providing not only technical assistance but also hand-holding support, which has proved highly effective. Further, the design of future operations should include development policy lending instruments that enable development partners to maintain a dialogue on procurement policy as well as flexible financial resources for implementation of procurement reforms.

# Chapter 1. Introduction

## 1.1. Relevant Country Information

### 1.1.1. Background

South Sudan emerged as the world's newest nation in July 2011, hopeful but bearing the brutal scars of a decades-long struggle that claimed the lives of millions, displaced most of the population, and crippled development. At the time of this South Sudan Procurement Assessment, South Sudan was a semiautonomous part of Sudan managed by the Government of Southern Sudan as part of the Government of National Unity, which included both the Government of South Sudan and the Government of Sudan.

The Government of South Sudan (GoSS) was established in 2005 after a Comprehensive Peace Agreement brought to an end 22 years of conflict between the Government of Sudan and the Sudan People's Liberation Movement. Southern Sudan became the independent country of the Republic of South Sudan on July 9, 2011, following a referendum held in January 2011. South Sudan's achievement of independence is significant and should have a major impact on the amount of revenues that the Government of the Republic of South Sudan (GRSS) can earn due to full ownership of the oil fields within its territory.

Perhaps uniquely for a post-conflict government, the Government of South Sudan in 2005 had immediate access to millions of dollars of domestic oil resources with which to fund its budget. However, the Joint Assessment Mission report prepared by the World Bank, United Nations, Government of Sudan, and Sudan Peoples' Liberation Movement in 2005 noted that the entire public service had to be built up virtually from scratch. Key ministries had very few technical staff, whose skills were not suited to modern fiduciary systems. Poor local infrastructure (including transport and housing), prefabricated offices, weak IT capacity, and limited communication only compounded these problems. Therefore, in view of the huge infrastructure and public service needs of the war-devastated country, the Joint Assessment Mission recommended a centralized procurement system with the procurement management function contracted out to an international firm for at least the first two years until capacity was built.

Formal and informal practices that existed both before and during the conflict shaped what was possible in systems development at the start of the peace. In 2005, the Government of South Sudan drew on staff from both the Southern Sudan Coordinating Council, which administered territories controlled by the Government of Sudan in the South during the conflict, and the Civil Administration of New Sudan, which covered the areas held by the rebel Sudan People's Liberation Army.

The interim and transitional constitutions have adopted a fairly complex structure, including a central government, state governments, and counties. This complex structure appears fiscally challenging. The efficient, transparent allocation and use of public resources are fundamental to any successful effort to improve governance and reduce poverty in South Sudan. The public service is still nascent, and filling positions--including for procurement-- has been challenging. It is not clear if MoFEP will

maintain its policy of recruiting procurement officers centrally and then deploying them to ministries, departments, and agencies. However, there is an ongoing public sector reform.

Multilateral donors, such as the African Development Bank and the World Bank, are likely to start lending to GRSS soon. Efficient and effective use by GRSS of the extra financial resources available to them will require robust PFM and procurement systems, while development partners are committed, by virtue of the Paris Declaration and Accra Accord, to make use of GRSS's PFM and procurement systems as much as possible. Development partners therefore want to assess the fiduciary risk to them of using these systems, which means first assessing the systems, and then working closely with GRSS to adjust existing reform programs, if necessary, and/or preparing new programs in order to reduce these risks.

## 1.2. The South Sudan Procurement Assessment Report (SSPAR)

This South Sudan Procurement Assessment Report was carried out as part of the South Sudan Integrated Fiduciary Assessment (SSIFA), which includes a Public Expenditure and Financial Accountability (PEFA) assessment as the other component. The procurement assessment's objectives are to take stock and identify any necessary changes to the ongoing reforms to ensure that a sound public procurement system is developed. In particular, the assessment will be the basis for designing a comprehensive procurement capacity development program to professionalize the procurement function in the country. It will also provide GRSS with information for monitoring the performance of its public procurement system and the success of the reform initiatives in improving the system. The assessment laid out in this report presents information that will help development partners determine the fiduciary risks to the funds they provide to South Sudan.

This report assesses the procurement systems at both the GoSS/GRSS and state levels, for which the four states of Jonglei, Northern Bahr el Gazhal (NBGS), Unity, and Western Equatoria were studied. The assessment's scope included the following:

- Empowering GRSS at various levels with the tools to continually monitor and analyze the performance of its public procurement system;
- Reviewing the country's public sector procurement structure and presenting a "snapshot" comparison of the actual system against international standards within the four pillars: (i) the existing legal framework regulating procurement, (ii) the institutional architecture of the system, (iii) the operation of the system and competitiveness of the nationwide market, and (iv) the integrity of the procurement system;
- Assessing the level of compliance with the formal system and identifying weaknesses associated with the public procurement process, and determining the risks to the implementation of development programs that rely on public procurement;
- Reviewing current capacity development initiatives, proposing actions required to professionalize the public sector procurement function and systematically develop a public procurement cadre sufficiently to efficiently manage public procurement;
- Identifying incentives to encourage nongovernment actors to participate in (i) bidding opportunities available through public procurement, and (ii) providing oversight of the

conduct of public procurement, as well as incentives that would encourage better commercial practices in the private sector;

- Establishing the basis for dialogue between GRSS and development partners on ways to bring about necessary improvements to the economy, efficiency, fairness and transparency of the public sector procurement system; and
- Developing a detailed action plan to achieve capacity and institutional improvements, including modifications to existing practices in the country, to ensure that contracts under projects meet internationally acceptable procurement standards.

The efficient, fair, and transparent expenditure of public resources are fundamental elements of any successful effort to improve governance and reduce poverty in South Sudan. Periodic analysis of the public procurement system and capacity building efforts is therefore justified in order to determine what strengthening measures, if any, are desirable in order to reduce fiduciary risk to both domestic and external stakeholders.

This report is the result of a data collection and assessment mission in South Sudan from June 17 to June 24, 2011. The study uses the OECD- DAC methodology for assessing national procurement systems and applies it as an overall framework for the assessment. The tool measures the country's performance compared to international best practices in procurement, and over the years it has become an increasingly important tool to benchmark country systems. It is important to stress that this tool is based on international best practices, which means that maximum scores across the board are most likely not obtainable in any country system. Also, it is a common mistake to put too much emphasis on the actual scores. While they can provide a good overview of the performance in different aspects of the procurement system, the scores themselves are of limited value. Rather, the scores should form the basis for a constructive dialogue as to the strengths and weaknesses in a given procurement system and are relevant in highlighting the areas to be prioritized in a process of continued reform.

### **1.3. Structure of This Report**

The remainder of this report is organized as follows. Chapter 2 explains the methodology used for this procurement assessment. Chapter 3 discusses achievements to date in reforming South Sudan's public procurement systems. Chapter 4 lays out the procurement assessment findings at the GRSS level, while Chapter 5 does the same for findings at the state level. Chapter 6 presents a Procurement Reform Action Plan, based on recommendations that came out of this study.

# Chapter 2. Methodology

## 2.1. OECD/DAC Methodology

Although this report is a Country Procurement Assessment Report, it could not be titled as such at the concept stage, because South Sudan had not yet become an independent country. In general, this report follows the World Bank's "Country Procurement Assessment Report Instruction" of July 2000, but with the recognition that in 2004, the World Bank joined with the OECD-DAC to update the Bank's earlier Country Procurement Assessment Report methodology. Therefore, the assessment and this report have mainly applied the methodology developed by OECD-DAC, which is known as the Methodology for Assessment of National Procurement Systems--Version 4, dated July 17, 2006.

### 2.1.1. Indicators Used

This methodology offers a detailed and operational assessment framework under four pillars and measures two categories of indicators: baseline indicators and compliance and performance indicators. The baseline indicators are divided into 12 overall indicators with a total of 54 sub-indicators spread among the pillars as below:

- *Pillar I:* Legislative and regulatory framework (covered under baseline indicators 1-2)
- *Pillar II:* Institutional framework and management capacity (covered under baseline indicators 3-5)
- *Pillar III:* Procurement operations and market practices (covered under baseline indicators 6-8)
- *Pillar IV:* Integrity and transparency of the procurement system (covered under baseline indicators 9-12).

Baseline indicators measure the quality of the legal and institutional framework, the effectiveness of the market structure, and the measures in place to ensure a high level of integrity and transparency in public procurement. Each sub-indicator is scored between 0 and 3.0, 3.0 being the highest score, and the score is then justified with a brief explanatory text.

The methodology suggests a set of indicators that measure the level of compliance and performance in daily operations and practices. Relevant sub-indicators are assessed as well, based on a sample of cases and summarized in a narrative report. However, as one would anticipate with a nascent procurement system, there were only a few compliance and performance indicators that the assessment team could score at all, due to the reasons described below. As with the baseline indicators, the compliance and performance indicators are also scored between 0 and 3.0, 3.0 being the highest score, and justified with a brief explanatory text

To enable the assessment results to be used later in the broader capacity development process, the OECD-DAC diagnostic framework was widened to include an explanatory dimension. In this way,

the focus of data collection was not only on *which* systems are in place and *how* they work in practice but also on *why* this is the case, providing an important starting point when defining actual capacity development strategies later on.

As a result of the explanatory focus, a qualitative data collection approach was selected in preference to the quantitative approach recommended by the OECD-DAC framework. In relation to this, the assessment team used a methodology for scoring 0-3 on the level of compliance and performance indicators scores based on interviews. The validity of the interviews was strengthened through respondent triangulation in that the same issues were investigated with a number of different types of stakeholders representing different categories (from the public sector, private sector, and civil society organizations). By using a scoring system similar to the baseline indicator scoring system, the findings illustrate the gap between baseline indicators and compliance and performance indicators and allow for future benchmarking.

In addition to the OECD-DAC indicators, other areas of interest to the development of the national procurement system were also examined.

## 2.2. Data Collection

The assessment is primarily based on a review of available relevant documentation and qualitative interviews with key stakeholders, as explained above. Special focus was placed on the following entities:

- *At the national level:* Ministry of Agriculture and Forestry; Ministry of Education; Ministry of Health; and Ministry of Transport and Roads.
- *At the state level:* Jonglei State, Northern Bahr el Ghazal State (NBGS), Unity State and Western Equatoria State.

A list of interviewed entities and stakeholders can be found in Annex B.

## 2.3. Methodological Implications

The assessment of many of the sub-indicators under indicator 1 relies on the assumption that valid procurement legislation exists. However, it has not been possible for the procurement assessment mission to determine whether the IPPDR, the Presidential Order and the MoFEP circular letter have a combined legal effect similar to that of a regular law, making them binding for public entities in South Sudan.

It is beyond the scope of the procurement assessment to construe the legal status of the IPPDR and the circular letter under South Sudanese law, and it is therefore assumed in the scoring (shown in Annex C) that they bind South Sudanese public entities in a manner similar to the effect of a regular law.

A public procurement and asset disposal bill has been drafted and is awaiting approval. However, the procurement assessment has to be based on the existing legal framework and not on pending legislation, so the scores and assessments are based on the IPPDR. The procurement assessment does include specific comments on the draft procurement bill.

With regard to the institutional capacity assessment, the intention has been to provide insight into the actual steps in the current procurement process in South Sudan. This gives valuable practical knowledge and deeper appreciation of the actual procurement operations in South Sudan. Consequently, the steps are presented in a descriptive manner, but at the same time the gaps and deviations from best practice procurement are also highlighted in the assessment.

#### **2.4. The States**

Given South Sudan's federal structure, each regional state is supposed to have autonomy on a wide spectrum of government areas, including public procurement. However, because the government structures of South Sudan are nascent, a number of state responsibilities are still carried out by the national government.

The procurement assessment mission spent one to two days with each of the four selected states, including a field visit to Jonglei State. Given the limited time and resources available for the mission, combined with language issues, the information gathered at the state level lacks the detail required to single out any states in a positive or negative way. The compliance and performance indicator ratings depict a general level of compliance, but it must be kept in mind that the picture might be brighter or darker for the individual states. A summary of the key findings from the four states is highlighted in Chapter 5.

#### **2.5. Stakeholder Involvement and Inception Workshop**

As a part of this assessment, a stakeholder inception workshop was held on May 13, 2011. The intention was to present the exercise to all relevant stakeholders at both the GoSS/GRSS and state levels. The workshop marked the initiation of the procurement assessment and focused on the general aspects of the exercise. At the same time, it offered a valuable opportunity for the procurement assessment team to meet with the key stakeholders to be consulted during data collection.

The workshop participants consisted of relevant procurement staff from selected ministries and the state level. There was also good attendance from private-sector counterparts, civil society organizations, the Anti-Corruption Commission, the Auditor General's office, and the development partners. The attendance at the workshop was satisfactory and the participants' active participation showed promise of positive involvement by key stakeholders in the assessment.

## 2.6. Validation Workshop

A procurement assessment validation workshop was held in Juba on September 5, 2011. The event allowed all stakeholders to comment and ask questions in relation to the draft assessment report of July 2011. It was arranged as a South Sudan Integrated Fiduciary Assessment exercise, and included representatives from both the procurement assessment exercise and the PEFA exercise, which was carried out parallel to the procurement assessment.

The event was very successful. It allowed for a thorough discussion of the preliminary findings and next steps in terms of procurement reform in South Sudan. The reflections that emerged from that discussion are an important part of this report.

# Chapter 3. Achievements Made in Procurement Reforms

The Republic of South Sudan is the newest and youngest country in the world, and as can be expected, it faces many challenges in developing a fully functional public procurement system. Nevertheless, progress has been achieved in a number of key areas since the signing of the Comprehensive Peace Agreement in 2005. Some of the key developments are listed in this chapter.

## 3.1. Legal Framework

The legal achievements of South Sudanese procurement have mainly consisted in the issuance of the IPPDR and the current preparation of the new draft law on procurement. These are both quite noteworthy achievements, and it should be noted that the IPPDR contains a regulation that clearly strives to eliminate procurement loopholes and underlines the intention of GoSS/GRSS to conduct sound and efficient public procurement. Consequently, the IPPDR is considered a good and valid starting point for the country's legal framework.

## 3.2. Institutional Framework

The regional government--GOSS--was established in 2005, and since then progress has been made in building up institutions and capacities in all policy areas. In 2011, the new procurement agent, Frannan International, identified 56 ministries, departments, and other government agencies at the GRSS level.

In 2007, a Procurement Policy Unit (PPU) was established and a procurement agent (Crown Agents) was appointed and assigned to procurement operations for all government programs. This was seen as a transitional situation, so the procurement agent was also required to provide advisory services to GoSS and to build the capacity of local staff.

A lack of procurement culture in GoSS and limited understanding of the role of the procurement agent initially prevented procurement capacity from developing in MoFEP. To fill the gap, individual ministries, departments, and agencies began to establish their own procurement operations. Although this was done in a very haphazard way and with little or no reference to the IPPDR, it set the pattern for increasing procurement capacities in ministries, departments, and agencies. Line ministries have appointed procurement directors, and some of them have established so-called Transitional Procurement Units with dedicated local staff.

In spite of all the difficulties, procurement capacities in the MoFEP and the PPU have been progressively building as well. Frannan International replaced Crown Agents and was assigned to support the PPU. The PPU recently hired two qualified procurement and legal experts. In addition, 10 staff members were recruited in December 2010, although they must still be trained and acquire

experience to be fully operational. The PPU is now on track to take control of some of the GRSS procurement functions and activities.

Progress has been made in *decentralization*, particularly since 2009, and a significant portion of the GoSS/GRSS budget has been directly transferred to the 10 states in the form of block grants (about 10 percent of the total budget in 2010). States also received assistance through a number of conditional grants. Each state government has its own Ministry of Finance and follows its own budget process. The state Ministries of Finance have started to develop procurement capacities, and limited procurement operations are being undertaken by the state ministries and counties.

### 3.3. Private-sector Developments

The development of a private sector in South Sudan has been relatively rapid since the peace agreement. More than 10,000 enterprises have been registered, consisting of small traders and entrepreneurs from South Sudan and its neighboring countries. Until now, the borders have been open for the influx of foreign entrepreneurs, but according to sources in the Ministry of Commerce and Industry, a more critical and restrictive approach to foreign investments will be pursued in the future.

The government has taken remarkable steps toward establishing a legal framework for the private sector, and it seems to be counting on the private sector to contribute to state building and development. Plans to involve the private sector in a dialogue on the development of the legal framework for business development have been initiated, and steps have also been taken to enhance private-sector development in a partnership with foreign donors.

The physical and digital infrastructure and the financial sector have all had to develop from a very low starting point, but there is a general awareness of the importance of this, and it seems to be getting a high priority from the government.

### 3.4. Integrity and Transparency

A number of positive signals and important milestones have been achieved toward raising the integrity and transparency of public procurement in South Sudan. Most notably, key institutions such as the Anti-Corruption Commission, the Audit Chamber, and the PPU have been established as important safeguards for trustworthy procurement procedures.

The Anti-Corruption Commission has yet to receive a powerful mandate to exercise its role as an effective instrument in the fight against corruption. However, its establishment sends out the important signal that GRSS is taking the fight against corruption seriously, and institutional capacity building efforts to develop the commission have started.

The Audit Chamber has been an equally important institution and, after overcoming challenges in the absence of an Auditor General, the chamber is now starting to become operational. It is expected

to receive stronger political support and commitment, which in the longer term will enable it to institute an effective external control mechanism for auditing the public procurement system.

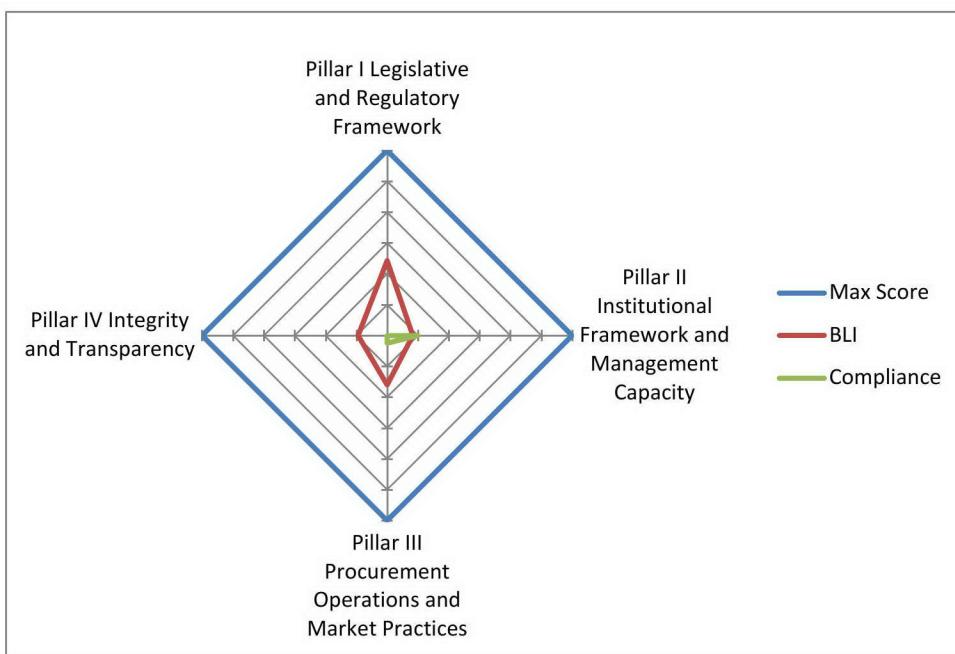
Last but not least, the establishment of the PPU has been fundamental to the further development of public procurement in the country. The PPU holds the key to carrying out an effective oversight function, in which the mandated procuring entities are monitored and regulated to perform transparent, economical, fair, and accountable procurement while additional procurement capacity is being developed.

# Chapter 4. Assessment Findings

## 4.1. Overview of Findings

Key findings from the procurement assessment are presented in the following sections. It is recognized that South Sudan's public procurement system is still nascent and has a considerable way to go before it can be characterized as an effective system. As can be seen from the scores in the spider web graph below, South Sudan scores very low when compared to international best practices.

**Figure 4.1. Aggregated Score for Baseline Indicator and Compliance**



The average scores for Pillar I are 1.2 for the baseline indicator and 0 for the compliance and performance indicator. The baseline indicator score recognizes that the draft IPPDR is a valid starting point as a framework for carrying out procurement in South Sudan. However, it also reflects the lack of supporting documents and the fact that processes and procedures are not clearly defined. The compliance and performance indicator score of 0.0 reflects the fact that most of the procedures stipulated in the IPPDR are in fact not followed in practice, and that some states even refer to the legal framework of Sudan instead.

The average scores for Pillar II are 0.4 for the baseline indicator and 0.5 for the compliance and performance indicator. The low baseline indicator score reflects the fact that the financial management of procurement is not well established. Furthermore, the capacity and set-up of key institutions for procurement operations are considered to be poor. The fact that the compliance and performance indicator is slightly higher than the baseline indicator is explained by the partial

adherence to procurement planning. Even so, the institutional application of procurement procedures and budget execution is very much *ad hoc* and the compliance and performance indicator could not be scored higher than 0.5.

The average scores for Pillar III are 0.8 for the baseline indicator and 0.1 for the compliance and performance indicator. The baseline indicator score indicates that there is dialogue between the public and private sector in South Sudan and that the Chamber of Commerce has been established and is operational. However, the operation of the private sector is considerably constrained by lack of access to credit, in turn exacerbated by the lack of well established procurement procedures. The compliance and performance indicator score reflects issues such as shortcomings in procurement files, in the handling of procedures, and in the informal delegation of authority. Furthermore, the private sector is still nascent and underdeveloped and unable to meet the demands of the public sector. On the positive side, the private sector has participated in discussions concerning the development of procurement legislation.

The average scores for Pillar IV are 0.5 for the baseline indicator and 0.0 for the compliance and performance indicator. The low baseline indicator score is due to the lack of effective external/internal control mechanisms. Further, the appeals mechanism is only partially established, and access to procurement information can be difficult. Finally, there are limitations to the fight against corruption, which is considered a major challenge in South Sudan. However, it is a positive sign that many of the required institutions, such as the Audit Chamber and the Anti-Corruption Commission, have been established despite the fact that they are yet to become operationally effective. The compliance and performance indicator score indicates that even though institutions have been established, in practice oversight, integrity, and accountability measures are still ineffective.

## 4.2. Pillar I – Legal and Regulatory Framework

Pillar I assesses the existence, quality, and use of a legal and regulatory framework based on the relevant legislative acts, through regulations and instructions, and down to detailed operational procedures, guidelines, model tender documents, and standard conditions of contract.

A procurement bill has been drafted and is awaiting enactment into law, but that situation has no influence over this procurement assessment, which has to be based on the existing legislation. The assessment is therefore based on the IPPDR, although the study provides comments on the draft public procurement and assets disposal bill.

### 4.2.1. The Legal Status of the IPPDR

Public procurement in South Sudan is governed by the IPPDR, which was approved by the Council of Ministers of the Southern Sudan Parliament in 2006. However, that set of regulations was not passed as a regular act before the Parliament, which leaves some doubt as to its exact legal status. The President of GoSS issued a decree by Presidential Order dated August 29, 2007 for all GoSS procurement to follow the IPPDR. In addition, MOFEP issued a circular letter on April 12, 2011,

requiring all public funds to be spent in compliance with the IPPDR. To some extent, this will counter the problems stemming from IPPDR's lack of legislative authority.

The IPPDR has a number of inherent shortcomings, such as ambiguous rules on the fractioning of contracts and calculation of contract value, inadequate rules for government-owned enterprises, and lack of a clear complaints review procedure. However, it was developed as an "interim" regulation and therefore meant only to serve a transitional procurement regime.

The IPPDR sets the minimum standard requirements for procurement activities in South Sudan during the interim period. It defines procurement methods and thresholds, outlines procurement procedures (including selection), sets advertising rules, and establishes the minimum content of the tender documents and specifications.

However, the IPPDR falls short of internationally acceptable standards in a number of areas. The shortcomings are many, the most important ones being these:

- Decisions in the procurement cycle are left to a "procurement committee," with no individual official clearly and solely responsible for the final decisions.
- The IPPDR includes numerous gray areas. For example, while the thresholds for using IPPDR are appropriate, the lack of clear rules for calculating the contract value and the fact that the thresholds might be derogated under "justified reasons" render the regulation inadequate to meet international standards. Similarly, the IPPDR sets qualitative selection criteria but also leaves some element of discretion as to whether or not a tenderer shall be disqualified.
- Further, no implementing guidelines and documentation have been issued under the IPPDR.
- The modality of submitting tenders and their receipt by the government are not clearly defined in the IPPDR, leaving room for dubious practices.
- Although the IPPDR provides bidders and applicants with a right to lodge a complaint, there are no procedures for review by an independent body.

#### **4.2.2. The Practical Application of the Legal Framework**

The procurement assessment mission learned that public entities often carry out procurement without adhering to the IPPDR. Some of the public entities explained that their lack of conformity arose from their lack of knowledge of the IPPDR or inability to draft the relevant procurement documents, their argument being that instead of doing something wrong in public, the problem could be hidden away by direct sourcing. Other public entities stated that the reason for their noncompliance was caused by the fact that they were not designated procuring entities under the IPPDR, which in turn meant that they were unable to procure vital services, works, and goods. The squeezed resource situation in the Government of South Sudan made it very difficult for the nonprocuring entity to await the procurement to be carried out by the Ministry of Finance in accordance with the principles of the IPPDR.

The noncomplying entities used different approaches to handle their procurements. Some simply chose direct sourcing, whereas others chose to follow other pieces of procurement legislation, for instance the Sudanese procurement rules.

The lack of conformity with the IPPDR represents a major obstacle to proper and sound procurement in South Sudan, but it is currently too early to assess whether that obstacle might be alleviated by the adoption and proper dissemination of the new procurement law.

#### **4.2.3. Lack of Supporting Documents**

The use of supporting documents (manuals, standard bidding documents, etc.) provides an opportunity to make the procurement rules more accessible, understandable, and easy to use for both the procuring entities and the bidders. As such, supporting documents can help to raise low compliance with the procurement rules, and they can be one of the key methods to raise compliance generally in an environment of low compliance. Unfortunately, no supporting documents have been issued to clarify the use of the IPPDR. Since a new draft law is currently being processed, it is meaningless to issue guidelines on the use of the IPPDR. However, something that should be seriously considered is to prepare the relevant set of supporting documents and guidelines before the final entry into force of the new procurement legislation.

#### **4.2.4. Various Risky Procedures in the IPPDR**

Some of the procurement procedures of the IPPDR contain elements that deviate from international best practice, including these:

##### ***Electronic procurement***

Electronic procurement is currently possible under the IPPDR without any real risk of corrupt practices being identified. Even though the procurement assessment did not identify any electronic procurements that have been carried out under the IPPDR, the electronic procurement rules in the IPPDR don't meet international best practice, as they contain no provisions on electronic signature, two-eyed principles, stamping of electronic documents, and so on. Further, electronic procurement should generally be used with great care in a system with very low internet penetration, since many (most) of the bidders will not be able to participate in the competition.

##### ***Two-stage tendering***

Rules in the IPPDR allow for two-stage tendering "in the case of complex contracts where it is not feasible for the Procuring Entity to formulate detailed specifications for the goods or works, to identify their characteristics and where it seeks tenders, proposals or offers on various means of meeting its needs in order to obtain the most satisfactory solution to its procurement needs."

Although two-stage tendering has many advantages, a fundamental prerequisite in international best practices for such procedures is that they be carried out with safeguards in relation to equal treatment, for instance in relation to submitting information from one tender to other tenders. In the assessment team's view, the IPPDR lacks the necessary rules to ensure that the two-stage procedure is carried out with the necessary equal treatment of the bidders.

### ***Consultant selection***

The selection of consultants is provided for under Article 50 of the IPPDR. The conditions are generally clear but contain some elements that are not in line with international best practices, including, for instance, the possibility of selecting the same consultant (without tendering) in follow-up assignments.

#### **4.2.5. The Complaint Mechanism**

A well functioning complaint mechanism is key to ensuring confidence in a procurement system. It can be a powerful incentive to competition, as stated in the OECD-DAC methodology.

The rules pertaining to complaints are set forth in Articles 56 and 57 of the IPPDR. The IPPDR indicates that the complaint should be handled in the first instance by the procuring entity with a possible right to “appeal” to the PPU under the MoFEP. The PPU may *recommend* suspension of procurement proceedings, termination of contract, criminal proceedings to be taken against erring parties, surcharge, suspension or dismissal of erring officials of the procuring entity, and any other appropriate remedies. The decision of the PPU is final and the IPPDR does not contain rules that allow the complaint to be submitted before the courts of South Sudan.

The complaint mechanism is currently weak, since it only grants a review before the PPU that (i) cannot be considered truly independent from the GRSS and (ii) in some cases is part of the procurement processes themselves, since the PPU must approve some types of procurement before they may be carried out by the procuring entities.

The procurement assessment mission did not identify a single complaint submitted under the IPPDR. Instead, the mission learned that the nonselected tenderers used threats (even death threats) at an alarming level in order to have the procuring entity reverse its decision.

#### **4.2.6. The Draft Bill for Public Procurement**

Even though the IPPDR constitutes the present legal framework for procurement in South Sudan, and is therefore the basis on which this procurement assessment was conducted, the procurement assessment mission made a cursory examination of the draft bill for public procurement.

From an overall perspective, the draft bill is a comprehensive piece of procurement legislation that addresses a number of the problems found in the IPPDR, but it still leaves important aspects of the forthcoming procurement regime to regulations, which will be issued in accordance with Article 124 of the draft bill.

The forthcoming regulations have not been presented along with the draft bill, so it is currently impossible to ascertain whether the important pieces of the procurement legislation that will be covered by the regulations are in line with international practice (e.g., the draft bill leaves to the regulations the exact contents of an eventual preference margin for national bidders).

The many important issues that the draft bill for public procurement leaves to the regulations make it very important that the regulations be adopted as soon as possible after the law is passed. Indeed, it would be preferable for the draft regulations to be available when the law is submitted to the SSLA so that South Sudanese lawmakers can see the entire proposed procurement scheme when they adopt the draft bill.

In relation to the shortcomings of the IPPDR, the procurement assessment mission notes the following concerning the evolution of the draft bill for public procurement:

- i. The practical application of the procurement regime will remain a major challenge even after the draft bill for public procurement is adopted. The Bill seems neither to take into account the IPPDR nor to build on the public procurement experience South Sudan has gained to-date.
- ii. It will be crucial for the completeness of the new procurement regime that the regulations be timely introduced.
- iii. The use of electronic procurement is limited in the draft bill to the announcement phase, which solves the problems identified in the IPPDR.
- iv. It may be worthwhile to consider including more explanatory rules on equal treatment in the proposed two-stage tendering system (i.e., during the dialogue, contracting authorities shall ensure equality and shall not provide information in a discriminatory manner that might give some tenderers an advantage over others). Also, consideration should be given to introducing rules on the authorities' release of confidential information from one bidder to the others.
- v. The scheme governing the selection of consultants is considerably improved, and the use of follow-up contracts is now limited to situations where "competition would significantly hinder the economy of a project."
- vi. The complaint mechanism is much more thorough under the draft bill, but it still leaves some concerns (as described in more detail below).

#### **4.2.7. The Mission's Initial Assessment of Selected Parts of the Draft Bill**

As explained above, the mission has not made a thorough assessment of whether the draft bill for public procurement complies with international standards and best practice in accordance with the OECD-DAC methodology. Such an assessment would have necessitated a detailed analysis of the accompanying regulations as well. With that reservation in mind, it would be useful to consider the following issues before the draft bill is finally adopted:

- i. The definition of "public contracts" does not address the classic "in-house" situation, where a contract is signed between two legal persons that are under the same control (i.e., for instance a municipality and a private entity owned by the municipality or a contract between two municipalities).
- ii. Consideration should be given to stating what conditions should apply for concessions under the draft bill (e.g., this would be highly relevant in the oil industry, where concessions would often apply). Concessions are mentioned in the draft bill but the conditions are not very specific.
- iii. The definition of "Central Procurement Unit (CPU)" will include state-owned enterprises, but what will apply to enterprises that are owned jointly by the state and private parties?

Further, should subsidies from the developing partners be considered in relation to the definition of “subsidized organizations”? The definition of “Subsidized organization” notes that it is any organization that receives greater than 25 percent of its financing, directly or indirectly, from public funds.

- iv. Prequalification is generally reserved for tenders that are technically complex or “other circumstances in which the high costs of preparing detailed bids could discourage competition.” Prequalification procedures have some inherent advantages for both the public buyer and the private bidders, as they limit the costs of drafting proposals for the private parties and reviewing an unforeseen high amount of proposals for the common procurement unit. This means that consideration should be given to allowing a more general use of prequalification.
- v. The regulations for exemptions and exclusions could offer more detail regarding exactly which circumstances constitute “special security measures,” to eliminate any doubts as to when a given procurement falls under the exception. Otherwise, it could be put forward that the exceptions should be interpreted narrowly.
- vi. The utility companies might be exempted if they are “operating as a commercial company, provided and to the extent possible, that they follow procurement principles of transparency, fair and equal treatment, promote competition, participation regardless of nationality, value for money, and maximizing economy and cost efficiency in procurement practices.” Since utilities account for significant public spending, consideration could be given to introducing a more detailed regulation to specify which utilities are to be included under the draft bill for public procurement and which may be exempted.
- vii. It is unclear whether Article 12 prohibits consultants that have participated in a needs assessment from bidding on a procurement that is based on the needs assessment (or other initial studies conducted by the procuring entity before the actual procurement).
- viii. Consideration could be given to introducing detailed rules governing the timeframes by which the procuring entities are required/allowed to respond to questions from the suppliers for clarification.
- ix. It is not quite clear exactly which circumstances allow the Tender Review Committee to cancel the procurement after the award of the contract.
- x. A very important aspect of a sound complaint system is that the unsuccessful bidders are given detailed information explaining the relative advantages of the selected tender. It might be worth considering to increase the information that the procuring entity must give *ex officio* to the unsuccessful bidders. It might also be worth considering to have provisions that balance the need for informing unsuccessful bidders with the need for keeping the confidentiality of the winner.
- xi. The standstill period is adequate, but from the mission’s initial review of the draft bill it was unclear what will apply in relation to complaints filed after the stand-still period. Also, Article 98 notes that “provided that no complaint may be submitted after the expiration of the concerned Standstill Period.” It is uncertain whether that implies that complaints must be submitted in the standstill period. If they must be, unsuccessful bidders will not have enough time to prepare their complaints, which could lead to half-finished speculative complaints being filed just to adhere to the rule.

- xii. It is not entirely clear what (if any) general principles shall apply in relation to the duration of the contracts concluded under the draft bill. For instance, what circumstance (if any) will allow for a contract of 30 years to be concluded?
- xiii. Should the draft bill for public procurement contain rules on the level of allowed subcontracting?
- xiv. The calculation of thresholds could include rules governing “the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year if that is longer than 12 months.”
- xv. The rules governing bid security are quite detailed, but they lack any general observations as to what credit ranking the issuers of security should have (for instance, an AAA ranking or the like).
- xvi. The rules governing cost variations in Article 75 imply that the cost adjustments shall be made following “agreed formulae.” However, the cost adjustments should always be part of the tender documents, since the choice of indexation can have severe economic impact on the prices and therefore on the total price paid by the procuring entity.
- xvii. Considering the very detailed regime on fraud, (etc.), consideration could be given to introducing rules governing the situation when a procuring entity has concluded a contract without conducting the needed procurement under the draft bill (which is typically one of the worst and most-often seen breaches of procurement regimes).

### 4.3. Pillar II – Institutional Assessment

#### 4.3.1. Oversight Institutions

According to the IPPDR, MoFEP is the only institution entitled to process procurement. In reality, MoFEP has not set up a procurement unit with the capacities to perform such a task, and ministries, departments, and agencies process their own procurement despite the fact that they have not been formally designated as procuring entities by MoFEP.

According to the IPPDR, MoFEP must also establish a PPU as a normative body to supervise the procurement activities of the ministries, departments, and agencies. The PPU was set up in 2007 and currently operates under the responsibility of the Director General of PPU.

In practice, the PPU currently fulfils the following functions.

##### ***Monitoring public procurement***

The PPU carries out a compliance check of all procurement processes. The review aims to verify that the procurement activities comply with the provisions of the IPPDR in planning and budgeting, procurement methods, tender documents and contract, opening and evaluation processing, and the overall integrity and transparency of the tender process. When a procurement proceeding is approved, the PPU issues a “letter of no objection.” However, it is unclear what legal value this letter has, when it should be requested, and what it entails. In the absence of a monitoring system, the capability of the PPU to carry out an effective compliance check is limited.

### ***Providing advice to contracting entities***

The PPU provides advice and support to the procuring entities of ministries, departments, and agencies in their procurement activities. When the PPU is informed by a procurement officer that a procurement proceeding is about to be launched, it follows up and supports the entire process, including the preparation of procurement plans, drafting of contracts, and help desk service. In a number of cases, the PPU is informed about the procurement processing only at the “letter of no objection” stage. In such situations, the request is sent after the contract has been awarded, providing the PPU with limited possibilities to play its role and ensure compliance with the procurement rules.

### ***Supporting training and capacity development***

The PPU provides implementation tools and documents to support training and capacity development for implementing staff. It publishes and disseminates hard copies of the IPPDR. It has also developed standard bidding documents based on the standard, sample, and trial documents from the World Bank; however, these templates have not been officially issued and distributed. In addition, the PPU supports the training activities of the Government Accountancy Training Centre. For example, it has developed a manual of procurement procedures to be used as a supportive document for procurement trainings at the center.

### ***Drafting amendments and regulations***

The PPU drafts amendments to the legislative and regulatory framework and to implementing regulations. As the normative/regulatory body, MoFEP has undertaken the preparation of a Public Procurement and Assets Disposal Bill and Regulations. This initiative was supported by USAID, and MoFEP contracted an qualified and experienced consultant for the job. However, the preparation of the new legal framework and implementing rules has been through a difficult and exhausting process, although the last steps to finalize the bill are underway. According to the consultant in charge, the bill went through five re-drafts, with input from various sources, including the World Bank and two lawyers. The draft used World Bank standards and also included some European Commission procurement elements. It has been harmonized with the COMESA (Common Market for Eastern and Southern Africa) procurement directives, it follows Botswana’s procurement system, and it includes elements of procurement laws from Ghana, Gambia, Uganda, and Kenya. In all, it is a comprehensive legal package and is legally tight. According to the consultant, it does not include any exceptions or exemptions for South Sudan in terms of good quality standard practice. From the information collected on the ground, it is unclear what the current status of the bill is (as of this writing) and when it would be passed into a law.

The role of the PPU in *procurement information, reporting and handling disputes on procurement* is extremely limited, leaving major shortcomings in procurement oversight and accountability.

In spite of great efforts, MoFEP and the PPU face serious obstacles in exercising their statutory overseeing function. Major issues are these:

### ***Lack of a monitoring system***

The PPU and MoFEP lack a monitoring system for collecting data. As a result, the PPU has no oversight of procurement activities at either the GRSS or regional levels, and it can be easily bypassed by the ministries, departments, and agencies that undertake procurement.

### ***Lack of professional capacity***

There is a lack of qualified and experienced staff with the capability to undertake the PPU responsibilities – including standing up to the user ministries, departments, and agencies when noncompliance is identified. So far, the PPU procurement agent (Frannan International) has played a key role in monitoring procurement processes, and a couple of young procurement officers have demonstrated capacities to continue the good work. Ten new procurement officers were recruited in December 2010 to reinforce the capacities of the team, but they have no experience or expertise in public procurement. The procurement agent's specialists have engaged the PPU procurement officers in on-the-job training.

### ***A limited degree of independence***

As part of the Directorate of Procurement of MoFEP, the PPU reports to the Director of Procurement, who in turn reports to the Undersecretary of MoFEP. There is no special procedure in case of noncompliance, fraud, or corruption.

### ***Lack of authority***

The roles of MoFEP and the PPU are defined in the IPPDR. Despite a Presidential Order and circular letters from the First Undersecretary of MOFEP asking for full compliance with the IPPDR, the PPU suffers from a lack of clarity on the status of these regulations. Ministries, departments, and agencies are *de facto* procuring entities, despite the fact that they have not formally been designated as such, and MoFEP is not in a position to regulate this situation. When identifying cases of noncompliance, fraud, or corruption, MoFEP is hardly in a position to fill in a case and/or stop the procurement process. The only means of pressure the unit has at its disposal is to reject the request for a “letter of no objection,” which in principle should freeze the procurement process and block any contractual arrangement and payment. However, it seems that byroads exist for the ministries, departments, and agencies to obtain this letter or proceed without it. It should be noted that the “letter of no objection” is not a requirement for the authorization of payment claims.

Overall, an unambiguous legislative and regulatory framework is lacking that could establish and assign normative/regulatory functions and define clear procedures. There is also a lack of adequate tools and resources, and the level of independence and authority needed to exercise these functions and implement these procedures is lacking as well. In such conditions, one can understand why MoFEP has difficulties being an effective normative/regulatory body and the PPU has difficulties performing its statutory functions.

This confusion culminates in squabbling between ministries, resulting in unnecessary stalling of procurement processes. The most striking example is given by the Ministry of Justice, whose activities in the area of public procurement overlap with the responsibilities of MoFEP. According to the Appropriation Bill, “all contracts [...] must be signed by the Ministry of Legal Affairs & Constitutional Development before they can be considered legally binding.” This task is carried out by the Directorate for Contracts for a fee. Yet the Ministry of Justice does not limit its role to authenticating contracts; it is also engaged in drafting procurement contracts, and it undertakes full compliance checks of the bidding documents and processes. This situation creates an overlap with the PPU’s role and is the source of additional burdens and delays.

#### 4.3.2. Procurement Process

As indicated above, ministries, departments, and agencies are *de facto* procuring entities. All of the line ministries and states that were visited have established a procurement unit, or at least a procurement function. GoSS/GRSS ministries undertake procurement, but the ministries of state governments do not perform this function yet.

In spite of the IPPDR, the *procurement systems* in the ministries are not implemented in a systematic and consistent way for all procurement proceedings. There are indications that the PPU and the procurement units are not systematically involved in all procurement activities. Procurement committees are in place in most ministries, but their composition, functioning, and role are unclear and hardly in accordance with the IPPDR requirements. There is no established practice to prevent conflict of interest.

##### ***Planning process***

Most of the line ministries visited prepare an annual procurement plan, but none of them prepare a multiannual plan. The way annual plans are prepared differs from one ministry to the other, but there is a strong tendency to give priority to the budget planning exercise in that the annual budget is prepared by a Budget Committee in consultation with the user departments. Once the budget is approved, the annual procurement plan is prepared by the procurement unit or the procurement officer on the basis of the annual budget. This exercise appears to be somehow disconnected from the actual planning process. Also, it seems that plans are loosely followed and updated. All things considered, the procurement plans are hardly used as effective planning and management tools.

##### ***Budget appropriation***

The availability of funds for appropriations is supposedly checked before launching a procurement action. The practice is that the procurement unit in the ministry checks the availability of the funds internally with its financial department. Before issuing the “letter of no objection,” the PPU is also supposed to check whether the procurement proceeding is mentioned in the procurement plan and/or if it is in accordance with the approved budget. In practice, the way all of this is performed remains unclear, in that signatures are applied to procurement contracts without commitment appropriations, and payment delays due to cash flow issues are the norm and can exceed several months.

##### ***Selection of the procurement method***

The IPPDR sets thresholds for the use of procurement methods, and the adequate procurement method is usually selected at the planning stage by the procurement unit in the ministries. However, there is a strong tendency by the user departments to free themselves from the thresholds and argue by all possible means the necessity to proceed with single- source procurement (justifications include volatile market prices, lack of competing suppliers, unplanned urgency, Independence Day, etc.).

At the GRSS level, the thresholds and procedures set in the IPPDR seem to be well known, at least by the procurement units in the line ministries. Hence, the reasons why thresholds and procedures set in the IPPDR are not followed must lie elsewhere than in a lack of awareness. From the evidence collected on the ground, the main reasons for using single sourcing or direct contracting are these:

- A lack of awareness and understanding of procurement procedures in the user departments;
- A lack of planning ahead of procurement activities to avoid urgency;
- A lack of trust in competitive proceedings due to a lack of understanding about the private sector (due to bad experience, public officers fear that the private suppliers try to deceive them, e.g. by delivering substandard quality or disappearing with the advance payment); and
- A high level of corruption in the user departments.

As a matter of consequence, the procurement units in the line ministries and the PPU in MoFEP face misunderstandings, lack of cooperation, and high pressure from the user departments. At the end the day, it seems that single sourcing remains a widely used – if not a dominant – procurement method.

At the state level, a low level of awareness about the IPPDR within the public administration appears to be the most obvious reason why thresholds for the use of procurement methods would not be applied.

#### ***Preparation of bidding documents***

Most procurement units in the line ministries use templates for the preparation of bidding documents. Usually, these templates have been developed by a procurement agent based on the World Bank templates. The PPU in MoFEP has developed its own set of templates, but it does not seem to be systematically used. Also, MoFEP (PPU) and the Ministry of Justice (Directorate of Contract) offer their services to draft procurement contracts, although this was not mentioned by the interviewees. Usually, user departments prepare the specifications with the support of the procurement units, but overall capability is very low for drafting adequate specifications.

#### ***Bid opening, evaluations and award***

Before the bid opening, tenders are received either by the procurement unit or the Undersecretary, depending on the ministry and/or the contract to be awarded. There is no established practice on the length of time between the deadline for submission and the date of opening; this is not always planned in advance. It has been reported that bids are not always opened immediately, and sometimes they are not opened at all; moreover, additional bids can even be accepted after the deadline. *Bid openings* are said to be public. When it is invited to do so, a member of the PPU assists with the bid opening and authenticates the bidding documents. *Bid evaluations* are organized on an *ad hoc* basis. In most cases, there is no distinction between the tender evaluation panel and the procurement committee. There is also no common practice among the different ministries on how the evaluations are carried out, and all possible approaches have been reported. There are instances where the recommendations of the evaluation committees have been ignored or “bent.” The final *award decision* is usually at the Undersecretary’s prerogative. Then, the “letter of no objection” is requested from the PPU as an approval of the procurement process, and the contract is sent to the Directorate of Contract of the Ministry of Justice to be authenticated; this also goes through the Undersecretary level.

#### ***Procurement in the states***

Procurement activities in the states are very limited. Procurement units or functions have been established in MoFEP. In some cases, they have been allocated an increasing number of staff, but functions are not yet clearly defined and units are hardly operational.

There is a sense of confusion among local line ministries about what they are supposed to do in terms of public procurement. The division of work between the central and state administration on the one hand, and between MoFEP and the line ministries at the state level on the other hand, is not clear to all. The rule is that procurement proceedings are handled by the ministries, departments, and agencies that hold the budget, the tendency being that most procurement activities are carried out by the central administration in Juba, which controls the largest share of the budget. Smaller contracts can be handled by the state administration, but in most cases they concern stationery, furniture, and possibly vehicles. There are also a few instances of larger contracts prepared by the line ministries at the state level.

#### **4.3.3. Procurement Information**

Procurement information activities and tools are limited, leaving major shortcomings in procurement overview and accountability. There is no central management of procurement information or any established practices or procedures in this regard. The ministry, department, or agency is left responsible for disseminating relevant information by its own means, which is usually limited to the publication of calls for tenders. Annual procurement plans and award notices are not published.

When a competitive procurement method is selected, calls for tenders are usually published in English-language papers such as *The Southern Eye*, *The Citizen*, and the *Khartoum Monitor*. However, due to the lack of a central information system, it cannot be verified that the advertisement rules are systematically followed. Also, due to poor control and enforcement, and despite significant efforts by the PPU, ministries, departments, and agencies often choose the convenient method rather than the most competitive method.

The IPPDR distinguishes between national and international competitive tendering, but there is no distinction in practice. English-language newspapers with wide national circulations are read by potential providers interested in doing business in South Sudan.

In addition, there is no central information system for collecting and monitoring procurement statistics. In the line ministries, the procurement units try to keep records of all procurement procedures, for example in an Excel sheet, but this is not a common and systematic practice, and the information collected is limited and hardly analyzed. Hard copies of key bidding documents (such as evaluation reports) are kept by the procurement units, but the procurement files contain very little information on the management of the contracts.

In MoFEP, the PPU does not collect any data on procurement. Only hard copies of the “letter of no objection” are filed. Hence, there is no oversight of the procurement activities, and the PPU has no capacity to evaluate the compliance and performance of the procurement system.

#### **4.3.4. Contract Management**

In terms of contract management, all interviewees acknowledge that capacities are low and that there are no clearly defined procedures for undertaking contract administration responsibilities.

Responsibilities for managing the contracts are decided on a case by case basis. In most instances, either the user departments or the procurement units in the central ministries, departments, and agencies undertake contract administration responsibilities. In some cases, contract management tasks are delegated to the state administrations, usually when the works supervision needs to be done locally.

In cases of procurement for works, the supervision and administration responsibilities are undertaken by engineers from the user departments. These engineers may have the adequate technical capacities for works supervision, but they are not aware of any procedures for inspection and adherence to quality control. Their knowledge and skills in terms of contract administration are even more inadequate. No specific training or manual has been made available to the contract managers so far.

This lack of contract management capacities leads to a number of critical problems: delays in correspondence, missing documents, outdated documents (including the bid security), mismanagement of contract amendments, no reimbursement claims of advance payments to contractors who fail to deliver, payment delays, and so on.

It should be noted that the interviewees have observed progress on bid security. In the past, the performance guarantees from the banks were systematically missing; they are now a requirement, in most cases, and are provided by the bidder when the contract is signed, at the latest. It seems that a series of bad experiences, combined with the efforts of the MoFEP and Ministry of Justice to raise awareness of the importance of the bank guarantee, have had a positive impact on practices.

Completion reports are not a common practice in the line ministries. Instead, the contract manager or the supervising officer in charge signs a certificate of completion for the purpose of supporting a payment request. Quality control of the works, goods, or services delivered is carried out on an *ad hoc* basis, and the quality of the control itself depends to a great extent on individuals rather than on established and shared practices.

Finally, there is no central management of the documents related to transactions and contract management. Once a contract has been signed, the procurement units in the line ministries lose track of it. There are examples where the procurement unit makes an effort to centralize procurement files, but capacities and coordination are lacking. In most cases, procurement files contain only key documents relating to the procurement process; they do not contain certificates of completion or any other documentation linking payments with performance.

#### **4.3.5. Procuring Entities' Capability**

In all line ministries visited, a procurement unit or at least a procurement function has been established. Each line ministry has developed its own approach. In most cases a specific unit has been established, and in some instances this unit is also in charge of the supply management as a whole, as well as logistics. There is at least one noticeable exception, where the officer responsible for procurement accumulates other functions; this seems to be a source of procurement malfunctions.

The levels of competency vary greatly among the members of the procurement units. However, interviews show that senior procurement officers have an appropriate level of knowledge and skills, and some of them have developed real expertise after a few years of work experience in procurement.

There is no job description defining the skills and knowledge profiles for procurement jobs, and so far the approach to matching skills against needs has been pragmatic. Procurement officers have various backgrounds, but they most frequently hold a degree in accountancy. When hired, procurement officers have very few specialized skills or knowledge of public procurement.

Significant efforts are made to train procurement staff. Most of the procurement officers interviewed have received training in procurement, either at the Government Accountancy Training Center for basic and intermediate levels or in various training institutes in neighboring countries for more advanced trainings. In general, trainees express satisfaction about the training received at the Government Accountancy Training Center, which seems to meet their needs. However, it is said to be very general in scope, and some trainees complained about the skills and knowledge gaps between participants.

There is no comprehensive training and capacity building strategy in the field of procurement, and MoFEP has limited leadership on this. Decisions regarding recruitment and training are taken on a case by case basis guided by short-term needs. There is no structured staff evaluation or career management. Finally, the procurement staff and capacities suffer from relatively high turnover in the administration.

In order to perform their tasks, procurement officers can require support from two different sources. Internally, technical assistants hired to support the Multi-Donor Trust Fund's procurement activities are key for building the procurement units' capacities, as they share knowledge, practice and templates with the rest of the team. Even though they have sometimes failed to adequately address the capacity building programs in the ministries, technical assistants' contribution to building up procurement units' capacities is significant. Whether these capacities will be sustained after they leave remains uncertain, especially when GRSS lacks a capacity building strategy.

Externally, the PPU acts as procurement help desk and advisory service to the ministries, departments, and agencies that carry out procurement operations. It can take the form of punctual advice, but the PPU procurement officers also try to provide on-the-job assistance and guidance in each of the procurement actions undertaken.

It should be noted that the most senior members of the PPU and professors from the University of Juba have expressed interest in being more closely involved in training activities in the area of public procurement. The University of Juba is currently associated with the latest training course delivered by the Government Accountancy Training Center, but its input remains limited. According to interviewees, training courses can be improved in the sense that they could be more practical, and they could also provide a greater level of empowerment and capacity development for local trainers.

### ***Procurement capabilities in the states***

Capability in the states is extremely limited. The procurement function is usually an extension of the states' departments of storage and purchase; it is hardly operational, and limited expertise in procurement has been developed so far. Procurement officers usually have a background in accountancy or finance, but they have limited access to procurement training. Since procurement activities are still limited in the states, the procurement officers' level of experience also remains limited, and their understanding of the procurement rules is rather theoretical.

#### **4.3.6. The Political Economy**

The fact that the Republic of South Sudan is a new country emerging from decades of war has considerable impact on the country's political economy. A political economy analysis is highly desirable for understanding the dynamics that would influence procurement reforms and institution building in the country. However, such an analysis was not possible under this procurement assessment, due to the needed expertise and the limited time that was available for the study.

### **4.4. Pillar III – Procurement Operations and Market Practices**

#### **4.4.1. Public-Private-Sector Dialogue**

GRSS has expressed its commitment to the private sector-led economy and is drafting a large number of laws to establish a proper framework for private-sector growth. This includes an investment law, a tax law, and a competition law, among others.

A dialogue with the private sector has been started in connection with preparing laws of relevance to the private sector, in which the Chamber of Commerce and Industry has participated along with the South Sudan Business Forum (established under the Ministry of Commerce to bring the private and public sectors closer together). The International Finance Corporation has also been involved in this process. However, according to private-sector representatives and the Chamber of Commerce and Industry, despite these important steps being taken to establish a good legislative framework, the actual implementation is lacking. The laws are being negotiated and passed, but there is an insufficient understanding by the public sector of the need for a full and effective implementation of the laws.

In 2011, GoSS launched a partnership program to support the private sector in cooperation with international donors, the International Finance Corporation, and the World Bank, with total donor commitments of USD 9 million. The program consists of three main components, namely an investment climate reform project, a small and medium-sized enterprise development project, and an access to finance project.

The government has also supported the establishment of small enterprises in farming as part of targeted pilot programs, and it has participated as an investor in programs to reestablish business activities in areas where the country has potential, which is mainly in agriculture-related businesses. During the first years after the civil war, the government opened the borders to enterprises entering

from neighboring countries. This has led to a large number of small foreign companies, including both investors cooperating with local persons and small traders aiming for short-term profits who are hardly more professional than the local starters of new businesses. A number of cases were highlighted during this assessment in which foreign companies took the down payment and disappeared after winning a contract. Today, down payments are often not paid, and this intensifies the financing problem faced by most local enterprises taking part in public procurement.

Hence, despite the above-mentioned efforts to build a constructive dialogue between the public and private sectors, the potential for improvement is high. The assessment indicates that there is a mutual lack of trust between the public servants and the private sector. The local business community is convinced that the public administration is highly corrupted and would not facilitate their participation in procurement. On the other hand, there is a fear among public servants that private suppliers would try to deceive them (the public servants) by delivering substandard quality items or by disappearing with their advance payments without delivering anything.

Overall, it is quite obvious that public procurement activities suffer from a lack of transparency, while single-sourcing and direct contracting are common practices. In such circumstances, the possibilities offered to businesses to participate in procurement activities are limited, which in turn is detrimental to strengthening the private sector in South Sudan.

#### **4.4.2. Private Sector Strengths and Competitiveness**

An increasing number of private enterprises consist of small traders and partly foreign-owned enterprises, mainly in the Juba area. There are very few medium and large enterprises. At the time of the procurement assessment mission, more than 10,000 businesses were registered in the new Business Registry, which was created in 2006, and commercial banks had also been established. As mentioned earlier, a Chamber of Commerce and Industry does exist, although it is apparently the only well functioning private sector association as of now.

The private sector is still very weak. According to the recently published World Bank/International Finance Corporation report *Doing Business in Juba*, Juba ranks as number 159 among 183 economies in “ease of doing business.” The lowest rankings for South Sudan are achieved in these categories:

- Closing of businesses (no. 183)
- Trading across borders (no. 181)
- Getting credit (no. 176)
- Registering property (no. 124), and
- Starting a business (no. 123).

The main reasons given for the low scores are the lack of a proper legislative framework and the high costs of starting a business. The highest rankings for South Sudan are given in the categories of

- Enforcing contracts (74), and
- Ease of paying taxes (84).

Access to credit is still very limited, a major obstacle for private sector development and growth. In 2008, the Bank of Southern Sudan established conventional banking as the only system for South

Sudan, and all Islamic banks withdrew. Since then, some foreign and local conventional banks have opened in Juba and a few are expanding to the rest of South Sudan.

South Sudan also suffers from high price levels and poor competitiveness in the private sector. The main reasons for this are the general lack of management and business experience and the lack of proper infrastructure, both consequences of the long period of civil war. As mentioned earlier, the private sector is very new and hence underdeveloped. An explosion has occurred in the number of exploitative, Gold Rush-style businesses aimed at short-term profits--profits obtained as a result of increasing activities in both the oil industry and in the domestic market after the return of refugees--and the rate of urbanization over recent years has been high.

Very few companies have the capacity to participate in the procurement market, partly due to their lack of business experience and financing and partly due to the illiteracy and low levels of education among entrepreneurs. The limited access to bank financing and the fact that no down payments are usually made are additional serious constraints that prevent many local enterprises from taking part in public tenders.

At the same time, the potential for business development in South Sudan is large. The oil resources and fertile agricultural land offer good bases for future growth. However, because the civil war left the country without the necessary infrastructure and competencies, it will take time to reconstruct the country again.

#### **4.4.3. Licensing and Registration**

A company registration and a tax registration are required, as well as a number of other formalities for the start-up of an enterprise. Furthermore, an import license is required for importing to South Sudan. The fees that must be paid in connection with registration and licensing to different levels of public authorities and for the required lawyer assistance are high, and this is considered to be a serious barrier for the establishment of new businesses.

#### **4.4.4. Import Licensing and Customs**

Problems related to the import of goods constitute a major barrier to economic development in South Sudan and adversely affect the competitiveness of its private sector. One reason for this is the high cost and long transportation time needed for importing into (and exporting from) this landlocked country due to the poor quality of its transportation infrastructure. In addition to this, the lack of market knowledge and knowledge of market procedures and regulations among small companies, as mentioned before, are important barriers.

At the national border, a number of authorities at the national, federal, state and municipal levels simultaneously charge taxes and duties, constituting a completely non-transparent system which at the same time is characterized by a high degree of uncertainty concerning the total fees and duties for crossing and the time needed for the process. It is impossible to predict the time it will take to pass the border, and numerous roadblocks and security checkpoints are visible on the A43 highway on the route from the Ugandan border to Juba, where additional taxes are reportedly charged. In addition to

that, complex procedures and a number of checkpoints or road blocks, along with different authorized or unauthorized tax collectors along other main roads from the border, are serious barriers for the foreign trade.

According to *Doing Business in Juba*, the importation of a standard container from Mombasa in Kenya to Juba requires 11 documents, 60 days, and USD 9,420. For example, importers must obtain an approval from the Bank of South Sudan to take money out of the country, obtain an import letter of credit, and bring cash to get their cargo at the border.

## 4.5. Pillar IV – Integrity and Transparency of the Procurement System

### 4.5.1. Internal and External Control Mechanisms

The assessment showed that in general, internal control units have not been established in the ministries or procurement entities. However, at the state level, internal audit units have been set up, although they are not yet operational. Consequently, very few, if any, financial audits and no procurement audits have been carried out internally in procuring entities.

In most cases, the ministries are still trying to find their feet in relation to procurement activities, and the procurement units are expected to undertake the control function as part of their considerable responsibilities. The problem then is that the procurement unit is basically asked to check its own procedures, which brings the value and effectiveness of such an internal control mechanism into question let alone the potential conflict of interest it raises. It is also clear the procurement units already have substantial tasks assigned to them, whereas actual control should in fact be a separate area and responsibility.

There is also a real issue regarding the capacity to undertake this internal control mechanism. As mentioned in section 5.3, there is a general capacity problem when it comes to procurement capability in South Sudan, and this also applies specifically to the ability to undertake effective internal control of procurement procedures. The PPU is still building its capacity, yet it is expected to function as a leading institution with the resources to guide other procuring entities in effective internal control. Furthermore, it is expected that once the internal audits are operational, they will have to start out by focusing on financial expenditures. This will take some time before they are capable of actively monitoring the various steps in the procurement cycle.

The Audit Chamber was established in 2005, but there have been considerable organizational changes within it over the last six years, and the institution has only just begun to actually audit financial expenditures. Consequently, no audit reports have yet been published. As in other relevant procurement institutions, the Audit Chamber has recruited a number of younger people to increase its resource base. It has also developed an audit manual and a code of ethics, and has set training activities as a priority for its further development. It is clear, though, that it will take some time before the newly recruited staff will be able to undertake real oversight responsibility. At the same time, the Audit Chamber has decided to start its activities by auditing activities from 2007, which means that there is a backlog of institutions to deal with before the operation will be up to date.

While the Audit Chamber continues to build up its capacity, external control mechanisms for public financial management and public procurement are not yet adequately effective. There is little intelligence available at both the internal and external levels of control in relation to the country's procurement activities. It is therefore difficult to give an estimate as to how big the problem of irregular procurement procedures actually is. Nevertheless, this assessment finds that procurement is a very new area that is inadequately monitored or regulated, and as a result it potentially provides a way for large sums of public spending to be channeled through ineffective systems.

#### **4.5.2. Absence of an Operational Complaints Handling System**

The regulations of the IPPDR facilitate a complaints review system with conditions and timeframes for complaints submission and handling. They describe two levels of complaints handling, in which a complaint should first be lodged with the responsible procuring entity and the head of the entity. The complaint can then be taken to the PPU after 30 days. However, the regulations do not seem to allow the case to be taken to court if the PPU sustains the decision.

In practice, however, practically no relevant complaints are made with the procuring entity or the PPU. The PPU states that it has received a number of complaints, but it has not been possible for the procurement assessment team to access more detailed information or statistics in connection with filed complaints. Furthermore, it is evident that private suppliers lack both awareness of and trust in the complaints handling system.

One of the reasons for the above could be that the complaints mechanism is not fully independent. As already mentioned, the procurement units in ministries already have considerable responsibilities and in effect are expected to monitor themselves and their own decisions as a first level of complaint. As a second tier of complaint, the PPU is not a separate entity. It is organized and subordinated under MoFEP, from which its activities are not fully independent or detached. Furthermore, the complaints handling function is part of the PPU's general activities, and a distinct complaints handling board has not been established. Consequently, a number of steps must be taken in order to ensure the independence of the complaints handling.

There is also an issue in terms of the transparency of the complaints handling function. As mentioned, it has not been possible for the procurement assessment team to review any decisions made. Also, the information that is necessary in order to handle complaints is not readily available to any stakeholders.

Finally, there is a considerable challenge when it comes to the capacity of procurement officials who are supposed to deal with complaints handling. At this time, apart from the few articles in the IPPDR, there are no guidelines or manuals that describe how complaints should be handled, and since very few cases have actually been tried out, there is little experience among the responsible officials to provide a trustworthy and fair system.

#### **4.5.3. Procurement Information**

The procurement assessment team found that procurement information is limited and its circulation is often restricted. The team has been able to identify some procurement notices from Southern Sudanese newspapers, but it is clear that these public calls are very few and that the vast majority of procurement notices are circulated directly to the intended suppliers in the absence of a centralized procurement information system (such as a website). The problem is strengthened by the fact that newspapers are not circulated everywhere, which is a potential constraint for suppliers in more remote areas even though they are few.

Additionally, it is not clear how suppliers are selected and how contracts are awarded, as this information is not readily available anywhere. A few suppliers are selected based on their reputation and connections, and these have access to a large portion of the procurements since the competition is not openly and clearly communicated to the broader spectrum of suppliers.

#### **4.5.4. Anti-corruption Measures**

Corruption is a challenge in South Sudan. This is confirmed in the assessment under Transparency International's Corruption Perception Index 2010<sup>2</sup>, which placed Sudan (including South Sudan) as number 172 out of 178 countries. South Sudan is facing considerable challenges in this regard in terms of nepotism, embezzlement, bribery, and other forms of corruption. Both the economy and social cohesion have been deeply dependent on the concept of extended families and alliances in relation to the civil war. Issues of nepotism and favoritism are still apparent challenges to the aspiration for an open and fair economy. This certainly applies to public procurement, where the procedures suggest a large number of red flags.

The Southern Sudan Anti-Corruption Commission is a valuable first step in intensifying the efforts to fight corruption in general and in procurement specifically, where vast sums of public spending are at stake. However, it is evident that the Anti-Corruption Commission is mostly effective as a symbol in the fight against corruption, since it has only been mandated to investigate cases but not to prosecute them. The commission is to hand over its cases to the Ministry of Legal Affairs, whose cooperation so far has not been productive. In effect, the Anti-Corruption Commission has handed over four to six cases to the ministry so far, but it has not received any feedback, and no legal action has been taken.

The Anti-Corruption Commission recently adopted a strategy from 2010-2014 with the objective of raising awareness, creating a strong anti-corruption network, and strengthening the efforts at the state level through anti-corruption forums. Until that is achieved and the legal mandate of the Anti-Corruption Commission is strengthened, the joint efforts in terms of fighting corruption in South Sudan will be limited.

It is worth mentioning that South Sudan has a vibrant civil society, which has been quite active in the peace reconciliation process. So far, however, the civil society has not been able to effectively

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<sup>2</sup> [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results)

counteract corruption. A genuine change in the focus of the civil society is required if it is to function as an effective measure in the fight against corruption.

# Chapter 5. Assessment at the State Level

## 5.1. Jonglei State

The procurement assessment team visited Bor in Jonglei State from June 20 to 22, 2011, and met with a number of stakeholders of the procurement system. A list of those met is presented in Annex B.

The procurement and investment unit under the Ministry of Finance has recently been established, but it is not yet operational. Ten officials have been assigned to the unit, but it is not clear what their responsibilities should be and no date has been set for when they should start undertaking assignments.

With regard to the purchases being made, smaller procurements such as stationery are undertaken at the state level. Major procurements are carried out at the GoSS/GRSS level. As an example, the State Ministry of Finance recently received a number of vehicles from GRSS but was not involved in the procurement procedures or have any influence based on their actual need. There is no specific procurement budget, and the size of the budget is very much decided from Juba.

So far there has been no training related to procurement, and awareness of the legal framework and procedures for public procurement is practically nonexistent. The IPPDR was not known to the staff, who referred to the Sudanese legislation instead. There are no manuals, guidelines, or standard documents to ensure streamlined processes.

Unlike many other state entities, in Jonglei State the Ministry of Finance recently established an internal audit unit, which now has five staff members and is still under development. It does not yet carry out any auditing but it does report to the Minister of Finance, who reports to the council in relation to how payments are made. The staff participated in general audit training in Juba in 2009, arranged by MoFEP and USAID. There is frustration over the fact that the unit cannot yet be effective due to missing legislation and authorization.

A Chamber of Commerce section has been established in Jonglei State with a total of 21 members. The structure of the chamber and of the private sector in general is very weak, and there is a general lack of commodities in Jonglei due to the infrastructure. Instead, businesses must rely substantially on foreign suppliers, particularly from Uganda and Kenya. Access to credit is also very constrained, since there are practically no banks or investment opportunities.

The state government is responsible for coordinating procurement activities with the communities. The Ministry of Finance allocates a budget to the communities, who then plan and purchase various goods and equipment. However, an actual procurement process does not take place in the communities; instead, purchases are simply paid in cash to the seller and not formalized. Knowledge on how to trade strategically is definitely lacking; trading activities are carried out *ad hoc* on the basis of common sense.

The physical infrastructure is a real challenge in Jonglei State as well, the roads being very poor, while office facilities, where they exist, are very modest. Furthermore, there is a shortage of supplies and storage facilities, making it extremely difficult to engage in long-term planning.

As at the GRSS level, the Ministry of Legal Affairs plays a large role in approving all contracts implemented at the state level. Effectively, this ministry approves the procurement activities in all other ministries and carries out check-ups in relation to whether companies are registered and paying their taxes and so on.

In sum, the level of procurement undertaken by Jonglei State is very limited, and the structures needed to guide procurement do not yet exist, practically speaking. Efforts have been made to establish units to undertake procurement responsibilities, but little has been done when it comes to informing them of their roles and responsibilities, and everyone seemed to be in a waiting position until formal independence on July 9, 2011.

## 5.2. Northern Bahr el-Ghazal State (NBGS)

For logistical reasons it was not possible for the procurement assessment team to physically travel to NBGS State (NBGS). However, three representatives of the state visited the team in Juba from June 22 to 24, 2011.

In NBGS, the ministries of the state government and the county administration have established a procurement unit or a procurement function. The Ministry of Finance has established a procurement unit, but it is not yet operational. Procurement operations are limited, capability is low, and procurement officers are waiting for instructions since they are not quite sure what they are supposed to do. The country administration undertakes small-scale procurement, and in this regard has gained experience and is building up capacities.

The procurement systems are not yet stable. There is a lack of awareness of the IPPDR; the procurement operations are governed by common sense rather than established rules.

Procurement committees seem to be more or less established. The annual budget planning exercise involves a broad consultation of the beneficiaries (at the county level, at least), but there is no evaluation plan. Calls for tenders are sometimes publicized through newspapers or the radio, and tender evaluations are undertaken collectively. However, this is not done in compliance with the IPPDR.

There is no complaint mechanism or understanding of why a single company should be allowed to challenge the collective decision of the evaluation committee.

Procurement officers have limited access to procurement training. Some of them have received general training in financial management or anti-corruption delivered by donor organizations, and from that they have built a general understanding of public procurement.

The private sector in NBGS lacks the competencies and financial capacities to access the public procurement market. Contracts are usually awarded to foreign companies.

### 5.3. Unity State

For security reasons, it was not possible for the procurement assessment team to physically travel to Unity State. However, procurement professionals from the state were able to travel to Juba and meet with the team on June 23 and 24, 2011.

Unity State established a procurement unit in 2008 with six staff members under the Ministry of Finance. The unit is still under development and is not yet operational. Its objective is to undertake procurement planning activities for the entire state, but all activities were more or less on standby awaiting July 9, 2011, the date of formal independence. At this point, the budget will first be received and procurement activities then planned in accordance with the budget.

The legal framework is not clear, the IPPDR is not known, and there are no procurement manuals or guidelines. Consequently, the exact role and mandate of the procurement unit has yet to be defined.

The ministries should undertake the procurements themselves, yet a substantial amount of procurement is still carried out at the government level. It is unclear whether tenders are actually floated locally. There are no clear criteria for selecting suppliers, and the process seems to vary from case to case, supposedly based on quality and reputation. There is no Audit Chamber or any other oversight mechanism in Unity State.

Unity State also faces the challenges of low-level capacity and lack of experience in planning and carrying out procurement processes. Furthermore, the private sector is quite weak, with a limited number of suppliers having the capacity to undertake public procurement. Due to the unstable political environment, the security situation is a major problem that affects all aspects of the procurement cycle.

### 5.4. Western Equatoria State

Due to the weather conditions, the scheduled trip to Western Equatoria State had to be cancelled. An appointment was scheduled with relevant staff from the Western Equatoria delegation during the validation workshop, but this was cancelled by the delegation. However, a successful telephone interview was conducted in September 2011 with one of the staff from the procurement department in the state MoFEP; the key findings are presented here.

In Western Equatoria, the state's Ministry of Finance has established a store and procurement department that carries out limited procurement operations. In practice, only routine items such as stationery are handled at the state level, while major procurements are handled at the federal level. A procurement committee has been established by the Ministry of Finance. It is composed of the Director General, the procurement head, and deputy and procurement officers. Procurement officers are aware of the IPPDR, but its procedures are not being followed. The state MoFEP is responsible

for distributing relevant procurement documents and for controlling adherence to them, but its capacity to undertake these functions appropriately is limited.

It is common practice to go directly to a local supplier once a need from a user department is identified and then to ask for a *pro-forma* invoice to secure the funds from the accounting department.

For open tenders (handled by the federal MoFEP), advertisements are broadcast on FM 90 Radio, which is owned by the state (there are no local newspapers). There are no public notice boards where advertisements are posted, and bid evaluation results are not published.

One of the major shortcomings in Western Equatoria is the fact that procurement planning is not being carried out, and consequently there is no overview or statistics of the procurement undertaken. Procurement is handled as an immediate need and is not seen as a strategic long-term activity. A few procurement officers have been sent to Juba to participate in relevant training activities. The intention is then for the staff to disseminate their knowledge to their colleagues, but this process has not been formalized.

The relationship between the public and the private sector is very informal, prices are discussed bilaterally, and payment is handled on a case by case basis. In principle, potential disputes should be handled by the court, but it has not yet come to this. Evidently, the few available local private suppliers cannot meet the needs of the public sector. The suppliers have to bring in products from other states or countries, and the distance and transport facilities are clear constraints.

Internal control mechanisms have been established and a new system has been set up to control the public expenditure. The general public financial management is being monitored, but not specifically in terms of procurement.

No external controls have been carried out so far and there is no complaint mechanism in place. If complaints are received they are handled informally by the procurement committee. There is an operational local branch of the Anti-Corruption Commission in Western Equatoria, but it does not yet cooperate with the procurement department in the state MoFEP.

# Chapter 6. Procurement Reform Action Plan

Based on the assessment and the validation process initiated in July 2011, which included a validation workshop held on September 5, 2011, this chapter presents a time-bound Procurement Reform Action Plan with short-, medium- and long-term strategies and recommendations for strengthening the procurement system in South Sudan.

As a first step toward developing this action plan, recommendations were defined. The actions needed to bring about the recommended changes were then identified, based on revisiting the data collected with a view to identifying the reasons behind the weaknesses and capacity gaps.

The short-term strategies presented here focus mainly on “quick wins,” that is, areas in which improvements may be achieved with small efforts and limited resource inputs, thus contributing to fast and low-cost enhancements of procurement performance. The medium- and long-term strategies, on the other hand, represent more complex and resource-demanding development strands.

In order to ensure the sustainability of the Procurement Reform Action Plan, the recommendations are based on the recognition that not all identified weaknesses of the system can be simultaneously addressed. Therefore, prioritizing the identified system weaknesses and capacity needs was an important aspect of defining the action plan.

GRSS is expected to adopt the Action Plans as the coordinated basis for the procurement reform initiatives in South Sudan.

## 6.1. Legal Reform

### 6.1.1. Short-term/Immediate Recommendation

#### *Recommendation 1: Strengthen the Procurement Reform Task Force.*

Public procurement reform is a multi-sector activity involving input from various players within and without government. Further, it is a challenging type of reform that has been achieved through different forms of incentives and advocacy in various countries. Experience implementing procurement reforms in the countries neighboring South Sudan has shown that task forces comprising a champion and interested actors from both the private and public sectors can play a pivotal role in facilitating implementation of procurement reforms.

During the conduct of this procurement assessment, the Procurement Reform Task Force was instrumental in facilitating the consultants’ data collection work as well as in providing useful comments on the draft reports. Further, the task force also undertook to validate the findings and the recommendations of the assessment and thereby facilitated the formulation of the Action Plan. At the inauguration of the Procurement Reform Task Force, it was mentioned that its work was important

for the assessments, but even more so for the implementation of the recommendations of the SSPAR recommendations.

It is therefore recommended that as a priority, the Procurement Reform Task Force should be strengthened by mainstreaming its activities in the MoFEP, with the PPU acting as its secretariat. The terms of reference of the task force would be updated to ensure that the task force is able to:

- Maintain the momentum of the procurement reform beyond the study phase;
- Facilitate consultations on procurement reform matters; and
- Monitor and evaluate the progress of procurement reforms and recommend ways of staying the course and maintaining speed of progress.

***Recommendation 2: Issue procurement legislation and supporting operational documents.***

Legal reform is already in process in South Sudan, and the draft bill for public procurement is now awaiting approval. A legally binding procurement law is a prerequisite for sound procurement operations in South Sudan, and a successful implementation of the draft bill for public procurement should be seen as the logical next step after the IPPDR.

However, it is strongly recommended that the draft bill for public procurement be thoroughly reviewed, before being passed, by legal experts with extensive experience in procurement legislation to avoid any gaps or loopholes in the bill. The review should compare the bill with the model law from the United Nations Commission on International Trade Law (UNCITRAL), which has become widely accepted by countries. Indeed, in the Common Market for Eastern and Southern Africa (COMESA), of which South Sudan is a presumed member, procurement directives are based on the UNCITRAL model law just like the procurement laws of the other eastern African countries. Basing the South Sudan procurement law on the UNCITRAL model law would be desirable for the ongoing initiatives on the harmonization of procurement policies for effective regional integration within sub-Saharan Africa. An initial assessment of the draft bill was made by the procurement assessment team, which recommends that the resulting comments be taken into account as a first step in a legal review of the bill.

The draft bill must also be supported with regulations and other documents, such as guidelines and a procurement manual issued by MoFEP. Since the draft bill refers to subsequent procurement regulations, developing them should be a top priority so that they can be issued alongside the procurement law.

In addition to that secondary legislation, the assessment also found that there is a need for operational and practical guidelines on handling procurement throughout the procurement cycle. A South Sudanese procurement manual should be basic, aiming to explain in a simple and straightforward manner the different steps of the procurement process and how to undertake the required activities. It is suggested that the manual be developed by experienced consultants in close collaboration with a sample of the procurement officers who are supposed to apply the manual in practice. Additionally, the initiative should be taken to develop standard bidding documents for the procurement of goods, works and services.

It is important to underline that primary and secondary legislation and a procurement manual will not solve all the operational challenges. The legal framework must also be supported and implemented through substantive capacity-building initiatives.

**Recommendation 2: Issue procurement legislation and supporting operational documents.**

**Activities:**

- a) Review and revise the draft bill for public procurement, based on the UNCITRAL model law.
- b) Draft secondary legislation and supporting documents.
- c) Implement legal framework for procurement in South Sudan.

**Responsible:**

- Ministry of Justice
- PPU (MoFEP)

**Risks:**

It has been an admirable and relevant ambition for the President to issue procurement legislation within the first 100 days of South Sudan's independence. However, there is a risk that if the legislation is passed too quickly--with the objective of meeting the deadline rather than having all the relevant aspects covered--the legislation will not be effective in improving the country's procurement performance.

**Objective/Achievement:**

- A comprehensive legal framework for public procurement in South Sudan is enacted.
- Procurement entities are applying and following the appropriate procurement legislation.

**Timing and priority:**

Starting immediately – December 2011

High priority

## 6.2. Institutional Reform and Private Sector Development

### 6.2.1. Short-term Recommendations

***Recommendation 3: Ensure adequate procurement planning to support transparency and good public finance management.***

A number of ministries, departments, and agencies at the GRSS level have developed procurement plans for 2011, with the active support of the PPU. However, evidence shows that the procurement planning is disconnected from the budget planning. Also, plans are loosely followed and rarely updated, and hence hardly used as effective management tools. In such circumstances, it is not

surprising that one of the most frequent reasons given for single-sourcing is “unplanned urgency.” For these reasons, there is a need to improve procurement planning and to better integrate procurement planning in the planning and management of the budget.

First, it is recommended to reference procurement planning in the budget laws. For now, the current legislation does not require a multi-year perspective on budgeting, and annual budget preparation is carried out on the basis of Article 88(1) of the Interim Constitution. Further, procurement planning should be mentioned in the Guidelines for Drafting Budget Strategic Plans. A provision on procurement planning should be included in a future budget law in order to make the procurement plan an integral part of the budget of each spending agency.

Then, each procuring entity should prepare a multiannual procurement plan. This procurement planning exercise should be mainstreamed in the budget planning. Ideally, the procurement plans should be an appendix to the budget of each spending agency. Annual procurement plans extracted from the multiannual plans should be submitted to the PPU, registered in the central procurement information system, and published on the Internet.

Procurement plans should be used to facilitate cash flow projections and expenditure commitment controls. When receiving a tender notification, the PPU should check whether the procurement operation was indicated in the procurement plan of the procuring entity. When this is not the case, the PPU should inform the budget accountant and internal auditor at MoFEP, who should be twice as careful when verifying that sufficient funds are available from the uncommitted balances against their budgetary appropriations.

Finally, procurement plans should be used by procurement units in the ministries, departments, and agencies to follow up on procurement activities. Procurement plans should be regularly updated and used to assess the extent to which they have been observed during the year. Also, when evaluating procurement activities, the PPU should assess discrepancies between the initial plans and the procurement activities carried out, and it should formulate recommendations to improve the planning and management of procurement activities in the ministries, departments, and agencies.

<b>Recommendation 3: Ensure adequate procurement planning to support transparency and good public finance management.</b>
<b>Activities:</b>
a) Make reference to procurement planning in the budget laws. b) Prepare annual and multiannual procurement plans in each spending agency along with budget planning. c) Disseminate annual procurement plans, including publication on the PPU’s central information website. d) Use procurement plans to monitor procurement activities, facilitate expenditure commitment controls, and evaluate procurement practices in ministries, departments, and agencies.
<b>Responsible:</b> <ul style="list-style-type: none"><li>• Procurement units in the procuring entities</li></ul>

- a) Make reference to procurement planning in the budget laws.
- b) Prepare annual and multiannual procurement plans in each spending agency along with budget planning.
- c) Disseminate annual procurement plans, including publication on the PPU’s central information website.
- d) Use procurement plans to monitor procurement activities, facilitate expenditure commitment controls, and evaluate procurement practices in ministries, departments, and agencies.

- Procurement units in the procuring entities

<ul style="list-style-type: none"> <li>• Budget units in the procuring entities</li> <li>• PPU</li> </ul>
<p><b>Risks:</b></p> <p>There is a high risk that procurement plans will be designed but barely followed, as has happened in the past. For this reason, it is important that the procurement planning be integrated into the budget process.</p>
<p><b>Objective/Achievement:</b></p> <ul style="list-style-type: none"> <li>• Procurement units in ministries, departments, and agencies have an overview of the procurement activities to be launched and followed up for the year to come.</li> <li>• Businesses have access to the procurement plans and can prepare for tender submissions in advance.</li> <li>• Tender processes initiated without being planned are analyzed with care by MoFEP before commitment authorization.</li> <li>• Procurement operations in the ministries, departments, and agencies are evaluated against procurement plans, and actions for improvement are taken.</li> </ul>
<p><b>Timing and priority:</b></p> <p>Immediately–June 2012 Medium priority</p>

***Recommendation 4: Clarify the role and strengthen the capacities of the PPU or its successor as a normative body to ensure appropriate monitoring, support good practices, and accompany the development of procurement operations at the centralized and decentralized levels.***

Since the IPPDR entered into force in 2006, MoFEP has faced difficulties in fulfilling its procurement functions. In particular, the PPU was established in 2007 as a normative body to supervise the procurement activities of the ministries, departments, and agencies, but it never acquired the capacity, expertise or authority levels required to exercise its normative and monitoring functions.

Hence, redefining the role of the PPU and enhancing its capacities is an urgent task.

The foundation for the PPU's activities should be the following:

- The role of the PPU should be enforceable by law, meaning that the future procurement bill should describe precisely what its role should be.
- The PPU should focus on core functions, such as supporting the procuring entities in their procurement operations and monitoring procurement activities at the GRSS level.
- The PPU should be at the forefront of procurement practices in South Sudan, that is, it should have high human and technical capacities.

The role of the PPU in supporting and monitoring procurement activities should be confirmed and enhanced. However, the PPU may not exercise an *ex-post* control function, which would be the role of the Audit Chamber under Recommendation 9; may not be involved in dispute resolution, which would be the role of an ombudsman institution, under Recommendation 13; and should not be involved in procurement operations except in providing advice and clarifications. In addition, although responsible for coordinating the capacity building activities in South Sudan, the PPU should delegate responsibilities to decentralized units at the state and county levels.

The core activities of the PPU should consist of the following:

- *Coordinating the training and capacity building activities.* The PPU should be responsible for capacity building strategies at both the GRSS and state/county levels. With the help of donor organizations and technical agents, the PPU should:
  - Support the development of procurement capacities at the GRSS level by developing and implementing an action plan for public procurement capacity under Recommendation 6.
  - Support the establishment and function of decentralized PPUs at the state and (possibly) county levels under Recommendation 7.
- *Supporting procurement activities.* The PPU should help the procuring entities comply with the provisions of the IPPDR and the future procurement legislation in terms of procurement methods, tender documents, and contract, opening and evaluation processing, as well as the overall integrity and transparency of the tender process. For this, the PPU should:
  - Establish a formal help-desk service in order to provide advice and support to the procurement units of ministries, departments, and agencies in their procurement activities. In case of dispute, the help-desk can advise the contracting parties, but for more advanced dispute handling and conflict resolution, it should signpost the parties to the relevant complaints handling authority under Recommendation 13.
  - Ensure that procuring entities have easy access to the procurement regulation and guidelines, standard bidding documents, and procurement manuals addressing their needs. The role of the PPU should consist of drafting, publishing, and disseminating this documentation.
  - Ensure transparency of the procurement process by publishing annual procurement plans and calls for tender on a central procurement information system under Recommendation 5.
- *Monitoring procurement activities:* As part of this function, the PPU should:
  - Follow-up and facilitate the procurement planning process by ensuring that the procuring entities prepare and publish annual and multiannual procurement plans consistent with annual and multiannual budgets under Recommendation 3. Procurement plans should be submitted to the PPU and validated and published on a central procurement information system.
  - Encourage compliance and ensure transparency of the procurement operations by proposing the abandonment of the “no objection letter” practice, which has no legal basis and overlaps with the contract authentication performed by the Ministry of Justice. In

place of the “no objection letter,” it should be compulsory for procuring entities to notify the PPU of all procurement operations before the publication in case of competitive tenders, and in any case before the contract is submitted to the Ministry of Justice for authentication. A contract should never be authenticated by the Ministry of Justice without previous notification to the PPU. If the procedure notified to the PPU does not seem to comply with the procurement regulation and rules (e.g., is not mentioned in the procurement plan, does not comply with thresholds), the PPU should inform the budget accountant and internal auditor at MoFEP and the Ministry of Justice, who are responsible for budget commitment authorization and contract authentication.

- Develop and maintain a central procurement information system under Recommendation 5.
- Progressively develop evaluation and reporting activities in order to assess procurement practices and to serve as the basis for the PPU action plans for public procurement capacity at the GRSS level under Recommendation 6.

Also, due to its overarching and advice functions, the PPU should be at the forefront of procurement practices in South Sudan and should have strong professional capacities. Hence, *the human capacities of the PPU should be reinforced*. An internal action plan for capacity development in the PPU should be implemented as soon as possible. It should include (i) technical assistance from qualified and experienced consultants with long-term commitment, (ii) a training strategy for the PPU staff, and (iii) a recruitment plan to attract procurement staffing for the longer term.

**Recommendation 4: Clarify the role and strengthen the capacities of the PPU or its successor under the new procurement law to ensure appropriate monitoring, support of good practices, and accompany the development of procurement operations at the centralized and decentralized levels.**

**Activities:**

- a) Recruit technical assistants for long-term commitment.
- b) Redefine the PPU and its role for the in supporting and monitoring procurement activities at the GRSS level.
- c) Set up a new procedure for the notification of procurement operations to the PPU.
- d) Formally set up a procurement help-desk.

**Responsible:**

- PPU
- MoFEP

**Risks:**

After five years of existence, and in spite of the IPPDR and a Presidential order decree and circulars from the highest level, the PPU has not been able to establish its activity in a sustainable way. Without a strong commitment from MoFEP to develop and implement a strategy for the PPU and from the procuring entities to acknowledge the PPU in its role and functions, the risk of having a weak PPU is very high, and MoFEP would not have the capacity to play a role in public

procurement.
<b>Objective/Achievement:</b>
<ul style="list-style-type: none"> <li>• The PPU has the technical and human capacities to support and monitor procurement activities at the GRSS level.</li> <li>• Procuring entities at the GRSS level have access to adequate support on public procurement.</li> <li>• Procuring entities develop their capacities.</li> <li>• Procurement operations progressively align with good practices.</li> </ul>
<b>Timing and priority:</b> Immediately-31 December 2012 High Priority

### 6.2.2. Medium- and Long-Term Recommendations

***Recommendation 5: Develop a central procurement information and monitoring system to enhance compliance and ensure transparency and accountability in procurement.***

One of the most serious obstacles faced by the PPU in exercising its statutory overseeing function is the lack of a central information system for collecting and monitoring procurement statistics. As a result, the PPU has no overview of the procurement activities at the GRSS or state levels. Also, the PPU is regularly bypassed by the ministries, departments, and agencies and, under such circumstances; it is difficult for the PPU to ensure compliance, accountability and transparency of the procurement activities.

For this reason, it is proposed that a central system for procurement information and tracking be set up. This system should be simple and web-based, and serve both internal and external purposes. Specifically:

- The system should be used by the PPU to follow up on procurement activities. All procurement operations notified to the PPU should be registered in a database; annual plans, call for tenders, and award notices, as well as supplier lists, should be centralized in this information system.
- Most of the information contained in the database should be published on the Internet and so made accessible to all. In particular, it should be made compulsory to publish all calls for tenders on this platform.

A three-step approach is proposed to set up this central procurement information and tracking system:

Step 1: *Design.* The development phase should include the following steps: (i) appoint an IT specialist (consultant), (ii) prepare the technical specifications of the system in cooperation between the consultant and the PPU, and (iii) develop and test the new system.

Step 2: *Activation.* The second phase should consist of launching the tool. For this, the consultant should (i) train the members of the PPU in the use and maintenance of the system, (ii) define procedures, rules and guidance documents to ensure appropriate use and sufficient quality of data, (iii) be equipped with the necessary IT equipment, and (iv) ensure high awareness of the tool among procuring entities and the business community, and hence advertise the system and promote its use.

Step 3: *Implementation.* The last phase consists of running the tool. The system should be used and maintained by the PPU on a daily basis. The use of the system by procuring entities for tender notifications (internally) and the publication of calls for tenders (externally) should be systematic, and the system's use by the business community should be actively encouraged.

Ultimately, the information collected and processed with the support of this procurement information and tracking system should be used for analyzing and reporting activities. The monitoring data should be analyzed to evaluate the activities and practices of the procuring entities, and possibly to serve as the basis for future action plans for public procurement capacity. Finally, the monitoring data could also be used for control operations.

<b>Recommendation 5: Develop a central procurement information and monitoring system to enhance compliance and ensure transparency and accountability in procurement.</b>	
<b>Activities:</b>	<ul style="list-style-type: none"> <li>a) Appoint a consultant to design the system and support its implementation.</li> <li>b) Develop the technical specifications of the tool in cooperation between the consultant and the PPU, and test the tool.</li> <li>c) Develop human and technical capacities in the PPU to use and maintain the information and monitoring system.</li> <li>d) Define procedures and rules, and prepare guidance documents to ensure appropriate use and sufficient quality of data.</li> <li>e) Promote the tool among procuring entities and the business community.</li> </ul>
<b>Responsible:</b>	<ul style="list-style-type: none"> <li>• PPU</li> <li>• MoFEP</li> </ul>
<b>Risks:</b>	IT capacities and infrastructure in South Sudan are limited. Therefore, at the design phase, it is important to ensure that the tool is feasible to use and therefore simple. Also, it is important to think about alternative ways of using the system (e.g., the possibilities of notifying tender to the PPU through both electronic and paper channels and of making computers available to procuring entities and suppliers at the PPU).
<b>Objective/Achievement:</b>	<ul style="list-style-type: none"> <li>• The procuring entities use the central information system to notify or advertise procurement operations.</li> <li>• The PPU uses the system to monitor public procurement and control the compliance of the operations with the rules.</li> </ul>

- Businesses have easy access to calls for tender (at a single location).
- The PPU acquires an overview of the procurement activities and practices at the GRSS level. It can use monitoring statistics to evaluate procurement and develop strategies for public procurement capacities. It can support control operations.

**Timing and priority:**

From January 2012 to December 31, 2013

High priority

***Recommendation 6: Ensure that procuring entities at the GRSS level have sufficient capacities to undertake procurement activities according to the rules and good practices.***

The capacity to carry out procurement is lacking at all levels of the procurement systems. The PPU itself is suffering from a lack of capacity; the capacity of the procuring entities is low and almost nonexistent at the state and county levels. There is also a lack of strategic approaches to human resources in procuring entities. This is evident in high turnover, non-strategic recruitments, and training opportunities granted on a case by case basis.

For these reasons, there is a need for a comprehensive approach to procurement capacity building in South Sudan. This strategy should be designed and implemented by the PPU.

The procurement capacity building strategy of the PPU should be divided into two distinct but complementary action plans:

- An action plan for public procurement capacity at the PPU and GRSS level, including contract management.
- An action plan for decentralized public procurement capacity, with the support of donor organizations.

This recommendation focuses on the action plans at the GRSS level. The action plan for decentralized public procurement capacity is developed in a separate recommendation (Recommendation 7).

As a first step, the PPU should get an overview of the procuring entities at the GRSS level. For this, the PPU should engage in a mapping exercise built upon previous initiatives by the PPU and the procurement agent, that identified 56 ministries, departments, and agencies at the GRSS level. This mapping exercise could consist of a census of all procuring entities and procurement officers. Following this, a list of procurement officers should be established and updated regularly. This list should constitute the basis for a procurement network, and it should be used to disseminate information and knowledge relevant to public procurement.

Parallel to this, the PPU should develop tools to support the procuring entities in recruiting procurement officers. For this, job profiles should be developed, disseminated, and used in the recruitment of procurement officers.

The job profiles should be complemented with a code of ethics, which procurement officers should be required to adhere to. This code of ethics should be an integral part of the job description, as it would spell out the high level of integrity that is expected from a procurement officer. Certification in procurement, as described below, should be conditional to adherence to the code of ethics.

The central element of this action plan for public procurement capacity should be an integrated and progressive procurement training cycle, from introductory courses to more advanced trainings. The PPU should be responsible for developing a coherent training catalogue, to be endorsed and delivered in the framework of the Government Accountancy Training Center.

It is suggested that the existing training program in financial management be kept as a first and important step in learning about the overall procurement framework in South Sudan. However, this training should be supplemented by a second program focusing more on the practical and operational aspects of public procurement, where the number of participants for each session is kept to a maximum of about 30 participants. As an example, the participants would work in smaller groups with practical exercises focusing on how to:

- conduct a needs assessment
- prepare realistic procurement plans
- prepare specifications
- undertake evaluations
- prepare a full contract with supporting documents
- manage contracts
- handle contract disputes
- monitor contract implementation, and
- understand audit principles.

Training curricula should be developed by the PPU with the support of consultants experienced in procurement trainings and in close cooperation with stakeholders (experienced procurement officers in the GRSS administration, University of Juba, Chamber of Commerce, etc.). The trainings should be delivered by qualified and experienced consultants, and practitioners from the PPU and procuring entities should be invited as speakers to share their practical experiences.

More advanced courses should be selected from the catalogue of regional management institutes (e.g. GIMPA or ESAMI). Trainings should be recommended by the PPU as part of a certified training cycle. A certificate should be delivered after completion of part--or the entirety--of the procurement training cycle. Each procurement unit should be encouraged to have at least one procurement officer from the unit holding a high level of certification.

Parallel to the action plan for public procurement capacity at the GRSS level, the PPU should also initiate specific actions to enhance capacities in the management of procurement contracts, which is also an area where the capacities are very low. In particular, introductory courses on contract management should be developed by the PPU and endorsed and delivered by the Government Accountancy Training Center. A manual for good contract management should also be developed to promote good practices on important issues such as bid security, contract amendments, acceptance procedures, contract disputes, and payments.

**Recommendation 6: To ensure that procuring entities at the GRSS level have sufficient capacities to undertake procurement activities according to the rules and good practices.**

**Activities:**

- a) Map competencies in all procuring entities and regularly update the list of procurement agents in the ministries, departments, and agencies.
- b) Develop job profiles for procurement officers.
- c) Develop a code of ethics for procurement officers.
- d) Develop and implement a training cycle in procurement, leading to certification.
- e) Develop a training course and a manual in contract management.

**Responsible:**

- PPU (MoFEP)
- Procuring entities

**Risks:**

Nepotism in the public administration of South Sudan is a serious obstacle to capacity building in procurement, and high turnover can easily ruin capacity building efforts. The mapping exercise, job profiles, and certification of procurement agents aim to tackle this, but there is also a need for the top management to acknowledge that expertise is required to carry out procurement in a proper way.

**Objective/Achievement:**

- The PPU has a full overview of the procurement capacities in procuring entities. It has an overview of the training needs and offers a comprehensive training catalogue.
- The procurement officers have a clear understanding of their role. The procurement agents can demonstrate their expertise in public procurement through official certification. The certification is recognized and procurement specialists have easier access to procurement jobs in the administration.
- The procuring entities maintain sufficient capabilities.
- User departments in ministries, departments, and agencies improve their contract management practices.

**Timing and priority:**

From July 2012 to June 2013

High Priority

**Recommendation 7: Ensure that procuring entities at the state and country levels have sufficient capacities to undertake procurement activities according to the rules and good practices.**

As already mentioned, the capacities of the procuring entities in the decentralized administration are almost nonexistent, so there is a need for a comprehensive approach to procurement capacity building at state and county levels.

In accordance with the Constitution, the states and counties should progressively develop procurement activities of their own. Hence, in order to develop their capacities, procuring entities should have access to similar tools and support as those available at the GRSS level.

The PPU in MoFEP should be responsible for preparing and implementing an *action plan for decentralized public procurement capacity*, aimed at establishing decentralized PPUs in the state ministries of finance and developing procurement capacities in the procuring entities of the states and counties. The plan should aim for the establishment of decentralized PPUs in the state ministries of finance and possibly at contact points also identified at the county level. A network should be formally established to facilitate the transfer of knowledge and dissemination of good practices among PPUs and to ensure the coordination and efficiency of the capacity building activities. The action plan should also include a training strategy for procurement officers in the local administration.

The work to be done is enormous. The PPU at the GRSS level should be formally responsible for this action plan for decentralized public procurement capacity, but it is obvious that donor organizations should be highly involved in the implementation of the plan.

**Recommendation 7: Ensure that procuring entities at the state and county levels have sufficient capacities to undertake procurement activities according to the rules and good practices.**

**Activities:**

- a) Develop an action plan for decentralized public procurement capacity.
- b) Implement the action plan, including:
  - setting up decentralized PPUs in the state ministries of finance, and
  - delivering trainings to procurement officers in procuring entities.

**Responsible:**

- PPU (MoFEP)
- State Ministries of Finance

**Risks:**

So far, capacity building activities in the local administrations have suffered from a lack of coordination. Hence, it is important that the action plan for decentralized public procurement capacity be strongly coordinated at the GRSS level with the support of donor organizations. In addition, it is important to start procurement activities at the local level; otherwise the administration will lose interest in developing capacities in public procurement.

**Objective/Achievement:**

- Procurement officers at the state and country administrations have access to support and trainings.
- Procuring entities at the state and county levels develop their own procurement

operations in compliance with good procurement practices.

**Timing and priority:**

July 2012-June 2014

Medium priority

***Recommendation 8: Encourage the participation of businesses by creating a business-friendly environment for procurement and ensuring that businesses have the capacity to comply with requirements and submit competitive bids.***

The private sector in South Sudan is nascent, and doing business in the country remains particularly difficult. GRSS is drafting a large number of laws aimed at establishing a proper framework for private sector growth, yet despite its expressed commitment to the private sector economy, only a few companies have the capacity to participate in the procurement market. The lack of transparency in public procurement in South Sudan and the use of single sourcing as the dominant procurement method do not contribute toward improving the situation.

For these reasons, facilitating the private sector's participation in public procurement should be a priority for the GRSS.

Priority should be given to ensuring transparency in public procurement operations. It is the role of the PPU to ensure that annual procurement plans and calls for tenders are duly published. It is also the role of the PPU, together with the budget accountant and internal auditor at MoFEP (budget commitment authorization) and the Ministry of Justice (contract authentication), to ensure that single-sourcing be used only when fully justified. Systematic notification of procurement operations to the PPU should improve transparency.

It is important to facilitate access to tender documentation. The central procurement information system should be used as a one-stop-shop for businesses willing to participate in public procurement. All calls should be published on the PPU's website, including deadlines for tender submission and budgets available. Guidance and tender documents should also be available online or, if this is not technically possible, the website should clearly indicate where and when the tender documentation can be collected (see Recommendation 5).

In order to enhance the local business community's capacities to participate in tender activities, trainings on public procurement for businesses should be proposed. The Chamber of Commerce, with the support of the Ministry of Commerce and Industry and the PPU, should be responsible for developing courses and organizing training sessions. Curricula should be developed with the support of the PPU and qualified and experienced consultants, who should also be responsible for delivering the trainings. Practitioners from procuring entities should participate in the training in order to engage dialogue between the business community and the administration. Businesses who took part in training activities should receive certificates. These should be acknowledged by the procuring entities as evidence of technical capacities.

Finally, there is a need to enhance mutual trust between the public and private sectors, which should engage in constructive dialogue and cooperation in public procurement. Hence, it is proposed that procurement awareness and tender orientation meetings be arranged, not only as a formal information meeting, but as events where responses and real dialogue with the private sector are encouraged. It is suggested that the PPU, in cooperation with each of the line ministries, arrange at least one meeting/seminar for procurement awareness and tender orientation and discussion in each state every year when the annual procurement plans are released.

**Recommendation 8: Encourage the participation of businesses by creating a business-friendly environment for procurement and ensuring that businesses have the capacity to comply with requirements and submit competitive bids.**

**Activities:**

- a) Facilitate access to procurement information, including through the PPU's central information procurement system (website) (see Recommendation 5).
- b) Develop training on public procurement for the business community, where businesses participating in training sessions should be certified.
- c) Initiate dialogue on public procurement between the business community and the administration through regular information sessions organized by the line ministries.

**Responsible:**

- Chamber of Commerce and Industry
- Ministry of Commerce and Industry
- PPU (MoFEP)

**Risks:**

Continuing dubious practices from both sides (non-reimbursement of the advance for payment, low quality of work, corruption, payment delays, etc.) can be detrimental to mutual trust between the business community and the administration; improvement requires strong commitment from both sides.

**Objective/Achievement:**

- Businesses have easy access to procurement opportunities, which are transparent and systematically published.
- Businesses, and in particular local businesses, have the willingness and opportunities to engage in public procurement activities.
- Mutual understanding between the business community and the administration are improved, and there is a better chance that service providers will deliver better and more targeted services to the public.

**Timing and priority:**

- From January 2013 to December 2013
- Medium priority

## 6.3 Strengthening Control and Oversight Functions

In this section, the procurement assessment team suggests a number of distinct yet related areas where the internal and external control and oversight mechanisms can be strengthened. One of the major challenges in South Sudan is the lack of accountability and compliance with the principles and procedures that have been established. An imperative part of a transparent and operational procurement system is having effective checks-and-balances institutions, such as an Audit Chamber, an independent complaints board mechanism, effective measures in the fight against corruption, and sound internal control procedures. Consequently, these issues are considered in the following recommendations.

### 6.3.1. Short-term Recommendations

#### ***Recommendation 9: Introduce procedural procurement checks in the Audit Chamber.***

The Audit Chamber was established in 2005. After some initial difficulties and organizational challenges, it has now started the process of auditing line ministries in the public administration. The Audit Chamber has a backlog of institutions to audit, and it will take time before it is up to speed and able to conduct effective checks of larger spending entities. Nevertheless, there is an immediate need to enhance the scope of the audits, or at least establish simple procedural checks in the country's procurements, since there is practically no oversight or monitoring currently taking place. The main issue is that the PPU is overburdened and lacks the resources and capacity to effectively monitor the procurement process. Furthermore, the internal control mechanisms are still very weak and do not offer corrective measures.

As a consequence of these shortcomings, there is no overview of how procurements are actually handled on the ground, and none of the existing institutions is currently well-positioned to identify irregularities.

It is therefore suggested that the Audit Chamber introduce procedural procurement checks when they carry out financial audits of line ministries, departments, and agencies at the national and state levels. Since the Audit Chamber is still finding its feet, the intention is not to roll out full-fledged procurement audits at this stage. Instead, the starting point should be much more basic: establishing how procedures are followed and correcting deviations.

In practice, the Audit Chamber should strategically select about three procurements, based on their size and nature, from each institution it audits. A practical way to conduct the procurement checks would be to develop a simple checklist to be followed and ticked off by the auditors. This checklist should examine at least the following items:

- Can the procurement be found in a procurement plan?
- Was proper justification given if the procurement method was direct contracting?
- Were the appropriate standard bidding documents used?

- Was the procurement sufficiently advertised and in due time?
- Was the bid opening carried out in public at the stipulated time?
- Was the bidding document approved by the head of the procurement committee?
- Can all of the original documentation be found in the procurement file?
- Has a bid evaluation report been completed by an approved Evaluation Committee?
- Was the bid evaluation report approved by the procurement committee?
- Have the contract specifications been altered since the contract award?
- Have satisfactory site inspections been conducted?
- Was the contractor's performance evaluated, and were any cost overruns justified?
- Has a contract completion report been filed?

**Recommendation 9: Introduce procedural procurement checks in the Audit Chamber.**

**Activities:**

- a) Assign staff to be responsible for procurement procedural checks as part of the auditing exercise and train them as necessary.
- b) Agree on a mechanism for selecting procurements to monitor.
- c) Develop and finalize the checklist.
- d) Establish corrective measures to be implemented in case of poor performance.

**Responsible:**

- Audit Chamber

**Risks:**

Procurement Auditing is still a new exercise for the Audit Chamber, and there would be a need to support it in the implementation of these procedural checks and how to conduct them.

**Objective/Achievement:**

- The procedural checks are intended as an oversight and monitoring tool and function as a first step in the installment of an effective procurement control system.

**Timing and priority:**

From January 2012 to December 2012

High priority

**Recommendation 10: Institute procurement investigations by the South Sudan Anti-Corruption Commission.**

Corruption is considered to be a major challenge in South Sudan, and public procurement is traditionally one of the areas most prone to corruption. The establishment of the South Sudan Anti-Corruption Commission is an attempt to put this challenge on the agenda, but more can be done in relation to fighting corruption and irregularities in public procurement.

As there is practically no oversight or monitoring of procurement performance taking place in South Sudan, there is also a definite gap in investigating irregular procurement procedures and suspected

cases of corruption and in prosecuting documented violations. Up until the formal independence of the Republic of South Sudan, the Anti-Corruption Commission was responsible for investigating suspected cases of corruption, but it did not have the ability to prosecute. The commission therefore had to refer cases to the Ministry of Legal Affairs, and that cooperation proved not to be very productive. Furthermore, the Anti-Corruption Commission did not focus on procurement cases due to the lack of resources and insight regarding irregularities in procurement processes.

Since the independence of South Sudan, the Anti-Corruption Commission has been able to investigate and prosecute cases without relying on the Ministry of Legal Affairs. Consequently, it is recommended that the commission use its strengthened mandate to focus on investigating procurement cases involving suspected acts of corruption.

The Anti-Corruption Commission relies largely on intelligence and rumors on an *ad hoc* basis. As a prerequisite to strengthening the focus on procurement cases, it is fundamental that the commission establish a more systematic way of handling and gathering intelligence. Since it is not well-versed in procurement cases, it is essential that the commission receive support and coordinate its activities with other relevant institutions, such as the PPU and the Audit Chamber (see also Recommendation 12).

In more practical terms, it is envisioned that the Anti-Corruption Commission should nominate a small unit responsible for investigating and prosecuting suspected cases of corruption in procurement. It is clear that such a unit would need support and that it should liaise closely with the PPU and Audit Chamber in selecting cases to be investigated. Furthermore, its staff would need procurement training, especially in how to detect red flags in a procurement process and how to gather evidence to be used in a criminal trial.

An operational procurement arm of the Anti-Corruption Commission would strengthen accountability and transparency in procurement operations, as procuring entities would have to document the entire procurement procedure. The role and significance of the Anti-Corruption Commission would certainly increase if it were able to demonstrate real enforcement of the country's anti-corruption provisions.

<b>Recommendation 10: Institute procurement investigations by the South Sudan Anti-Corruption Commission.</b>
<b>Activities:</b>
a) Establish a distinct procurement unit within the organization. b) Develop and deliver procurement training to the relevant staff. c) Develop a protocol between the PPU, SSACC and Audit Chamber on procurement investigations (see Recommendation 12). d) Develop and test the procurement investigations format.
<b>Responsible:</b>
• South Sudan Anti-Corruption Commission

- a) Establish a distinct procurement unit within the organization.
- b) Develop and deliver procurement training to the relevant staff.
- c) Develop a protocol between the PPU, SSACC and Audit Chamber on procurement investigations (see Recommendation 12).
- d) Develop and test the procurement investigations format.

- South Sudan Anti-Corruption Commission

<b>Risks:</b> The Anti-Corruption Commission's mandate to prosecute is still brand new and has yet to be tested in practice. It needs strong political support to operate effectively and to be able to prosecute politically sensitive cases.
<b>Objective/Achievement:</b> <ul style="list-style-type: none"><li>• The procurement unit of the Southern Sudan Audit Chamber is fully operational and carrying out investigations of procurement cases before the end of 2012.</li></ul>
<b>Timing and priority:</b> From January 2012 to December 2012 High priority

***Recommendation 11: Enable the internal control mechanism to become operational.***

Formally, few internal audit units have been established in some of the national line ministries and ministries of finance at the state level. In general, internal control mechanisms are not operational in South Sudan, since they are not actively monitoring procurement procedures. Most procuring entities at both the national and state levels have only recently been established; their responsibilities must still be defined.

The poor state of internal control alongside the weak external control mechanism in South Sudan means that a number of operations, including procurement, are carried out randomly and are unchecked. In order to learn from the process and as a way of ensuring that procedures are accurately followed, it is essential to have a functioning internal control unit with the capacity and mandate to execute actual control.

The intention in establishing an internal control mechanism for procurement is to institute a first level of procedural checks. These can help correct misunderstandings and deviations from the formulated practice.

The very first step would be to ensure that all procuring entities in a given ministry at either the national or state level have established internal control units. It is expected that the Ministry of Justice should take charge in checking that this is implemented in all ministries.

Secondly, all internal audit units must be capable of handling simple checks of how procurement processes are organized and carried out within the entity. The checks would focus on simpler and more procedural things compared with the suggested external audit checks (see Recommendation 9). The internal control would focus on issues such as:

- Did the procurement follow the procurement plan?
- Was the procurement published?

- Were the appropriate standard bidding documents used as part of the procurement process?
- Did all members in the evaluation committee participate in the evaluation of the bids?
- Was payment made in accordance with the appropriate procedures?
- Was the delivered product in accordance with the contract?

However, if irregularities are detected, the internal control units should be able to refer a procurement case to the external control handled by the Audit Chamber after liaising with the head of the procuring entity.

Finally, it is recommended that the internal control procedure be utilized at the highest level in any procuring entity. Therefore, it is suggested that the internal control unit hold regular briefing sessions with top management, enabling them to effectively bring attention to relevant cases.

<b>Recommendation 11: Enable the internal control mechanism to become operational.</b>
<p><b>Activities:</b></p> <ul style="list-style-type: none"> <li>a) Strengthen the internal audit functions in all procuring entities.</li> <li>b) Capacitate internal audit functions to handle basic procurement procedural checks.</li> <li>c) Develop an internal audit checklist.</li> <li>d) Institute regular briefings, from internal audit functions to department heads.</li> </ul>
<p><b>Responsible:</b></p> <ul style="list-style-type: none"> <li>• Ministry of Justice</li> <li>• MoFEP</li> </ul>
<p><b>Risks:</b></p> <p>The internal control mechanism in procuring entities is subject to the head of the department who can overrule recommendations made by the unit. Therefore, there is a risk that some leaders will disregard the findings if they do not correspond with their own perceptions.</p>
<p><b>Objective/Achievement:</b></p> <ul style="list-style-type: none"> <li>• Internal control functions are established and fully operational in all ministries at the national and state levels by June 30, 2012.</li> </ul>
<p><b>Timing and priority:</b></p> <p>From January 2012 to December 2012 Medium priority</p>

### 6.3.2. Medium- and long-term recommendations

***Recommendation 12: Establish a formalized inter-agency cooperation among accountability institutions in procurement.***

The key institutions that are vital to combat corruption in public procurement – like the PPU, the Audit Chamber, and the Anti-Corruption Commission – have now been established in South Sudan. There is a need to allow these institutions to find their feet and develop their competences. However, a disproportionately long process should be avoided, and more importantly, the growth of and cooperation between these institutions should be kept in focus.

So far, the Audit Chamber and Anti-Corruption Commission have not focused on procurement, and their cooperation with the PPU is practically nonexistent. Effectively, this means that the PPU until now has been left alone in terms of procurement oversight, and it has not been able to undertake substantial monitoring of procurement in South Sudan due to its limited capacity.

Consequently, it is necessary for the distinct institutions not only to grow and develop but also to work more closely and systematically together. This requires significant buy-in and will from the top management in these institutions. As a first step, it is suggested that the heads of the PPU and the Anti-Corruption Commission and the Auditor General meet to discuss and agree on the principles for their future collaboration. Furthermore, the heads should appoint a main counterpart within their organizations to handle interagency cooperation and to support the establishment of an interagency unit to be formed by the counterparts and other relevant staff.

It is important that the interagency unit and their meetings be formalized and streamlined to ensure that the events are prioritized by all three institutions. It is suggested that the interagency unit meet quarterly as soon as it is ready to operate and that the meetings and activities be rolled out by 2013 at the latest.

Additionally, consideration should be given to involving representatives from civil society organizations as observers to the forum. This would enable them to play a role as a potential watchdog of transparency and integrity in South Sudan, as well as provide them with the possibility of offering their insight, if not specifically in terms of procurement, then into relevant issues or areas that would require attention from the oversight institutions.

In order for the meetings to be productive and concrete, it is suggested that a template or a specific format for continued information sharing among the institutions be developed.

It is suggested that each institution prepare and present at least one case to be discussed at the meetings, based on an agreed-upon format. The intention is then for the other institutions to comment on and share their insights on the specific case, as well as to agree on the actions to be taken and decide on the cooperation needed to conclude the case at hand.

This rather ambitious attempt to strengthen interagency cooperation in procurement oversight and investigation is a longer-term objective. The initial objective will be for the institutions to start to

coordinate their activities and utilize each others' strengths. Then they can continue to develop and improve that cooperation. Eventually, this should result in a much more effective and integrated procurement oversight system.

**Recommendation 12: Establish a formalized interagency cooperation among accountability institutions in procurement.**

**Activities:**

- a) Hold a high-level meeting between PPU, the Audit Chamber and Anti-Corruption Commission.
- b) Appoint interagency counterparts within PPU, the Audit Chamber, and the Anti-Corruption Commission.
- c) Establish a formalized interagency accountability institutions forum.
- d) Conduct regular intelligence-sharing meetings every quarter.
- e) Develop an information exchange format.

**Responsible:**

- PPU
- Audit Chamber
- Anti-Corruption Commission

**Risks:**

Interagency cooperation will only have a real effect if the three accountability institutions actually prioritize the meetings and openly share important information among one another. In order for this forum to be productive, all three institutions need to take leadership roles and contribute substantial input to the meetings.

**Objective/Achievement:**

- Intelligence and information sharing among the key procurement institutions in South Sudan are strengthened through the holding of at least four annual meetings in 2012-2013.

**Timing and priority:**

From July 2012 to December 2013

High priority

**Recommendation 13: (i) Strengthen PPUs' (or their successors') independence and role in complaints handling; and (ii) Strengthen the Anti-Corruption Commission to enable it to review appeals by bidders that come directly to it to complain or that are not satisfied with the decision of the PPU.**

According to the IPPDR, procurement complaints are first handled by the head of the procuring entity. Secondly, a complainant has the right to submit the complaint to the PPU. In practice, however, very few complaints are submitted, and an independent complaints-handling authority is

clearly absent. Theoretically, the PPU should function as an independent complaints-handling authority, but it is still subordinated to the Ministry of Finance and, accordingly, cannot be considered as independent when handling complaints submitted against this ministry.

There is also a cultural issue, namely of bidders not wanting to submit complaints, which can be partly explained by the lack of trust in the complaint handling system. However, there is an additional issue stemming from lack of awareness of the rules and how a complaint should be processed.

The assessment found that the PPU does not have the capacity to handle the second tier of complaints handling with its many other responsibilities. Other countries, such as Ethiopia, have established a procurement complaints board as an independent entity.

An alternative way to organize complaints handling, also seen in other countries, is through an ombudsman institution. The ombudsman institution would not only handle procurement complaints, but would also be part of a larger institutional reform in South Sudan. The recommendation stemming from this action plan is that this institution should have a specific unit with the mandate and capacity to handle procurement complaints as a second tier. A prerequisite for this is that the unit's mandate should not have ties and that it should be strong enough to issue final decisions. Its designated staff should also receive sufficient training in how to review the procurement process and handle complaints.

Furthermore, it should be an objective for the ombudsman institution to improve the transparency of complaints handling, since this is often overlooked as part of the complaints handling institution's responsibility. Therefore, it is recommended that once the institution has been established and become operational, it should publish all the decisions made (ideally at its website) and prepare an annual overview of all the decisions made, including justification. This would be important in helping to raise the level of trust in such an institution, and hopefully it would lead to an appropriate number of complaints being submitted.

**Recommendation 13: (i) Strengthen PPUs' (or their successors') independence and role in complaints handling; and (ii) Strengthen the Anti-Corruption Commission to enable it to review appeals by bidders that come directly to it to complain or that are not satisfied with the decision of the PPU.**

**Activities:**

- a) Establish an independent ombudsman institution to act as a second tier for complaints handling in South Sudan.
- b) As part of the legal framework, include specific provisions for an independent complaints handling institution.
- c) Appoint members to a complaints handling board.
- d) Publish decisions.
- e) Conduct and present an overview of decisions made.

**Responsible:**

- Ministry of Justice

<b>Risks:</b> It is essential for the complaints handling institution not to be subordinated to any ministry, and it must receive a clear mandate to alter decisions made by the procuring entities. In other countries where ombudsman institutions have been established, they can only issue recommendations to other public institutions but cannot issue enforceable decisions. It is therefore crucial that there be the political will to give the appropriate authority and independence to an ombudsman institution.
<b>Objective/Achievement:</b> <ul style="list-style-type: none"><li>• An effective complaints handling system is facilitated.</li></ul>
<b>Timing and priority:</b> From January 2013 to December 2013 Medium priority

## Timing and sequencing of Procurement Reform Action Plan

Recommendation	2011	2012	2013	2014	
1. Strengthen the Procurement Reform Task Force.		High priority	High priority		
2. Issue procurement legislation and supporting documents.		High priority			
3. Ensure adequate procurement planning.		Medium priority	Medium priority		
4. Clarify the role and strengthen the capacities of the PPU.		High priority	High priority	High priority	
5. Develop a central procurement information and monitoring system.			High priority	High priority	High priority
6. Ensure that procuring entities at the GRSS level have sufficient capacities.			High priority	High priority	
7. Ensure that procuring entities at the state and country levels have sufficient capacities.				Medium priority	Medium priority
8. Encourage the participation of businesses by creating a business-friendly environment for procurement.			Medium priority	Medium priority	Medium priority
9. Introduce procedural procurement checks in the Audit Chamber.			High priority	High priority	
10. Institute procurement investigations in the South Sudan Anti-Corruption Commission.			High priority	High priority	
11. Enable the internal control mechanism to become operational.			Medium priority	Medium priority	
12. Establish a formalized inter-agency cooperation among accountability institutions in procurement.				High priority	High priority
13 Strengthen PPUs' (or their successors') independence and role in complaints handling and strengthen the South Sudan Anti-Corruption Commission to enable it to review appeals by bidders.		High priority	High priority	High priority	



## Annexes

## Annex A. Procurement Reform Task Force Members

Mr. Peter Ajang, Internal Audit, MoFEP

Mr. Abraham Diig Akoi, Aid Coordination, MoFEP

Eng. Gabriel Makur Amour, Ag. Director General for Roads and Bridges, MTR

Mr. Benjamin Ayali, Deputy Director of Accounts, MoFEP

Mr. Ayom, Revenue, MoFEP

Mr. Simon Akuei Deng, Secretary General, South Sudan Chambers of Commerce, Industry and Agriculture

Mr. Sunday Aggrey Jaden, Ag. Director General, Administration & Finance, Ministry of Labour and Public Service

Mr. Joseph Kenyi, Budget, MoFEP

Mr. Kur Ayuem Kur, Coordinator for Civil Society Organizations

Mr. Simon Kiman Lado, Director of Accounts, MoFEP

Mr. Tombe Logale Lukak, Deputy Auditor General, South Sudan Audit Chamber

Mr. Martin Mayen Mabet, Director of Procurement, MoFEP

Ms. Margaret Labanya Mathya, Director General, Centre for Census, Statistics and Evaluation

Mr. Paul Obong, L. Counsel, MoLA & CD

Mr. Nicholas Omondi Ouma, Coordinator, Agency of Independent Media

Mr. Justo Koma Petronio, University of Juba

Mr. Philip Gbambi Samuel, Director for General Operations, Procurement and Logistics, MoCI

Mr. Deng Yai, Executive Director, South Sudan Anti-Corruption Chamber

## Annex B. Stakeholder Schedule

Entity	Unit	Persons met	Appointment
Finance and Economic Planning	PPU	Paul Obang Gora, Legal Advisor <a href="mailto:paul_gora@yahoo.com">paul_gora@yahoo.com</a> +249 955 020 736 +249 923 493 281  Erik Koenen, Procurement Agent (Frannan International) +249955557284 <a href="mailto:erik@frannan.com">erik@frannan.com</a>  Samuel Akani Procurement Agent (Frannan International)  Erik Koenen, Procurement Agent (Frannan International), +249955557284 <a href="mailto:erik@frannan.com">erik@frannan.com</a>  Luke Obiri, Procurement Agent (Frannan International) +249955557282)  Nurdin Kassam, Project Director (Frannan International) +249955557283 <a href="mailto:kass@frannan.com">kass@frannan.com</a>  Pitia John Michael, Senior Public Officer 0955828380 <a href="mailto:mikepitia@yahoo.co.uk">mikepitia@yahoo.co.uk</a>  Bol Deng Gai, Director of Procurement +249 126 256 916	22.6  22.6  23.6  23.6  23.6
Chamber of Commerce/Industry		Mr. Simon Akuer, Secretary General, Chamber of Commerce +249 957 122 462 <a href="mailto:akueibeng@yahoo.com">akueibeng@yahoo.com</a>	17.6.
CSO		Kur Ayuen, Coordinator 0955 910 036 <a href="mailto:mjkou@yahoo.com.au">mjkou@yahoo.com.au</a>	18.6.
Services supplier		Deng M.Leek, Director, Giant Solutions Group 0957 165 009	18.6.

Entity	Unit	Persons met	Appointment
<b>Works supplier</b>		Mr. Kyi Win, ABMC, Thai South Sudan Construction 0955 019 768	18.6.
<b>PWC</b>		Naomi Kinyanjui, Consultant +429 920 409 008 <a href="mailto:Naomi.kinyanjui@ke.pwc.com">Naomi.kinyanjui@ke.pwc.com</a>	18.6.
<b>Agriculture &amp; Forestry</b>	Support to Agriculture and Forestry Development Project & Emergency Food Crisis Response Project.	Ms. Florence, Procurement Specialist 0955 083 602	20.6.
<b>Education</b>	Procurement	Martin Manyang Mamur, Director for Procurement 0902571036 <a href="mailto:martinmanyang@yahoo.com">martinmanyang@yahoo.com</a>  Abiy Admassel, Consultant procurement 0955134443 <a href="mailto:abiyadmas@yahoo.com">abiyadmas@yahoo.com</a>	20.6.
<b>University of Juba</b>		Anthony Anku Pele, Professor <a href="mailto:dukuapad@yahoo.com">dukuapad@yahoo.com</a>  Joseph Suliman Kanido Foro, Lecturer 0912247939 <a href="mailto:joseph_foro@yahoo.com">joseph_foro@yahoo.com</a>  Justo Koma Petronio, Lecturer 0918196062 <a href="mailto:Pjustokom@yahoo.com">Pjustokom@yahoo.com</a>	20.6.
<b>Road and transport</b>	Procurement	Otim Bong, Deputy Director <a href="mailto:bongotim@yahoo.co.uk">bongotim@yahoo.co.uk</a> <a href="mailto:otim.bong@mtr-goss.org">otim.bong@mtr-goss.org</a>	20.6.
<b>Ministry of Commerce and Industry</b>		Mr. Kuot Madhor, Director of External Trade 0955 537 517	20.6.

Entity	Unit	Persons met	Appointment
<b>Jonglei State</b>	<ul style="list-style-type: none"> <li>• Ministry of Finance:           <ul style="list-style-type: none"> <li>- Director of Procurement</li> <li>- Director of Internal audit</li> <li>- Directorate of Commerce</li> <li>- Directorate of Taxation</li> </ul> </li> <li>• Chamber of Commerce</li> <li>• Duk County</li> <li>• Akobo County</li> <li>• Ministry of Legal Affairs</li> </ul>	<p>Duom Kuol, Director General 0955 124 972 <a href="mailto:duom_kuol@yahoo.com">duom_kuol@yahoo.com</a></p> <p>William Manyang Roor, Director, Procurement and Investment Benjamin Gorang Atem, Director of Internal Audit</p> <p>Zuagin Racho Balko, Senior Inspector of Internal Audit</p> <p>Abbas William Akor, Junior Inspector</p> <p>Kueth Chuol Turuk, Junior Inspector</p> <p>Kuol Liak Atem, Inspector of Internal Audit</p> <p>Kuol Monykuc Atem, Directorate of Commerce</p> <p>Alith Apeel Alith, Director of Taxation</p> <p>Daniel Majok Kuor, Chairperson, Chamber of Commerce</p> <p>Mabior Arok Amou, Executive Director of Duk County</p> <p>William Khor Wuol, Executive Director of Akobo County</p> <p>Daniel Deng Kuong, Head of Legal Administation</p> <p>Kuot Jook Alith, Legal Counsel</p>	20.6.-21.6.
<b>Private business and import</b>		Abram Miek Kau, CEO, Bai Investment Bank +249 959 077 777	21.6
<b>Ministry of Agriculture and Forestry</b>	<ul style="list-style-type: none"> <li>• Procurement and Logistics</li> </ul>	Clement Diko Paul, Director +249 912 938 223 <a href="mailto:diokopol@yahoo.com">diokopol@yahoo.com</a>	

Entity	Unit	Persons met	Appointment
<b>Northern Bahr el Ghazal State (in Juba)</b>	<ul style="list-style-type: none"> <li>• Finance – procurement</li> <li>• Procurement trainers/capacity building</li> </ul>		22.6.
<b>Unity State (in Juba)</b>	<ul style="list-style-type: none"> <li>• Finance – procurement</li> </ul>	James Wiejial Tek, Inspector of Procurement  Peter Kanor Muou, Procurement Officer	23.6.
<b>Ministry of Legal Affairs</b>		Juma Yoane Kebi, Legal Advisor, +249 122228219, <a href="mailto:meyangwa_10@yahoo.com">meyangwa_10@yahoo.com</a>  Moua Moti Moua Korok, Director of Contract +249 912351839, <a href="mailto:moua2011@yahoo.com">moua2011@yahoo.com</a>	21.6.
<b>Development Partners:</b>  <ul style="list-style-type: none"> <li>• USAID</li> <li>• Joint Donor Team</li> </ul>		Honor Flanagan, Deputy Head of Office, Joint Donor Team +249 912 501 117 <a href="mailto:Honor.flanagan@minbuza.nl">Honor.flanagan@minbuza.nl</a>  Harry Bottenberg, Agriculture Advisor and Mission Environmental Officer, USAID Sudan Program, Juba, Sudan +249-901234631  Lokosang W. Lemi, Economic Policy Specialist, USAID Sudan Program +256477207467 <a href="mailto:lolemi@usaid.gov">lolemi@usaid.gov</a>	21.6.  17.6
<b>Auditor General, Southern Sudan Audit Chamber</b>		H.E. Amb. Steven Kiliona Wondu, Auditor General	23.6.
<b>Southern Sudan Anti-Corruption Commission</b>		Francis Kupako Bassan, Director General for State Coordination and Donor Relations	24.6.
<b>Ministry of Health</b>	Procurement	Henry Obbo Owino, Procurement Specialist, Umbrella Program For Health, Systems Development 0955 504 903	23.6.

Entity	Unit	Persons met	Appointment
<b>Task Force Meeting</b>			24.6.
<b>Western Equatoria State (by phone)</b>		Sonaa Santino, Ministry of Finance, Procurement Department	13.9.
...			

## Annex C. Assessment Sheet

### Key to Compliance Scores:

- 0 = No compliance/performance**
- 1 = Partial compliance/performance**
- 2 = Substantial compliance/performance**
- 3 = Full compliance/performance**

BLI indicator	BLI Score	Comment BLI	Compliance Score	Comment Compliance
<b>Pillar I – Legislative and Regulatory Framework</b>				
<b>Indicator 1:</b>				
<p><b>Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations</b></p>				
a) - Scope of application and coverage of the regulatory framework and public access to legislation	Scoring Criteria			
	<p>The legislative and regulatory body of norms complies with all the following conditions:</p> <p>(a) Is adequately recorded and organized hierarchically (laws, decrees, regulations, procedures) and precedence is clearly established.</p> <p>(b) All laws and regulations are published and easily accessible to the public at no cost.</p> <p>(c) It covers goods, works, and services (including consulting services) for all procurement using national budget funds.</p>			
	<p>The legislative and regulatory body of norms complies with (a) plus one of the above conditions.</p>			
	<p>The legislative and regulatory body of norms complies with (a) of the above conditions.</p>			
	<p>The system does not substantially comply with any of the above conditions.</p>			
0	<p>(a) The procurement regulation of South Sudan is currently contained in the Interim Public Procurement and Disposal Regulation (IPPDR), which was approved by the Council of Ministers of the Southern Sudan parliament in 2006. The exact legal status of the IPPDR is not clear, as the IPPDR has not been formally adopted by the South Sudanese Parliament and as it does not derive authority from a specific act / bill.</p> <p>The wording of the IPPDR implies that the IPPDR is the principal legal source for South Sudanese procurement (see Article 2 on repealing and Article 5 [Scope and</p>		N/A (the BLI concerns the overall scope and structure of the legal framework)	
			N/A	

BLI indicator	BLI Score	Comment BLI	Compliance Score	Comment Compliance
		<p>Application]), and the GoSS has issued a circular letter of 12<sup>th</sup> April 2011 requiring all public funds to be spent in compliance with the IPPDR. This is in line with the wording of the IPPDR that requires the procuring entities to procure only if they have been designated a procuring entity or to let the Minister of Finance handle the procurement on their behalf. It should be noted that the regulations might be derogated "in cases where the Government decides that it is in the national interest to use different procedure." As the legal status of the procurement regulation is not entirely clear, it does not meet international standards in terms of a clear precedence of the regulation.</p> <p>The IPPDR does not provide legal authority for any lower-level explanatory rules. The fact that the legal nature of the IPPDR is unclear means that the legislative norms are not clearly established.</p> <p>(b) It is not clear from the IPPDR when and how it has been published. Further, the regulation is not readily available to the public at no cost, and it has not been possible to locate a copy of the IPPDR on the Internet through the webpage of the GoSS.</p> <p>(c) Goods, works and services (including consulting services) are covered by the legal framework for procurement.</p> <p>(a) not met; (b) not met; (c) met</p>		
b) - Procurement methods	Scoring criteria			
	<p>The legal framework meets all the following conditions:</p> <p>(a) Allowable procurement methods are established unambiguously at an appropriate hierarchical level along with the associated conditions under which each method may be used, including a requirement for approval by an official that is held accountable.</p> <p>(b) Competitive procurement is the default method of public procurement.</p> <p>(c) Fractioning of contracts to limit competition is prohibited.</p> <p>(d) Appropriate standards for international competitive tendering are specified and are consistent with international standards</p>			
	<p>The legal framework meets the conditions of (a) and (b) plus one of the remaining conditions.</p>			
	<p>The legal framework meets the conditions of (a) and (b).</p>			

BLI indicator	BLI Score	Comment BLI	Compliance Score	Comment Compliance
		The legal framework fails to substantially comply with any three of the conditions (a) through (d).		0
1		<p>(a) The allowable methods for major procurement (i.e. procurement above the monetary threshold of USD 150,000 for goods and 300,000 for works and all types of consultancy services) is established unambiguously with an appropriate hierarchical definition in the IPPDR. The procurement of consultancy firms above the thresholds are done under QBS-principles, but the procurement of individual consultants (even over the highest threshold of USD 2,000) may be done on the basis of "qualification", which is in line with the World Bank's recommendations but not fully in line with international best practice.</p> <p>The most important decisions in the procurement cycle are left to the "procurement committee" of the procuring entities under the IPPDR. The IPPDR section 6(2) states that "the Head of Procuring Entity and members of the Procurement Committee shall be accountable and responsible for compliance with these Regulations in the award of contracts", but it might still be argued that no individual official is clearly and solely responsible for the final decisions.</p> <p>(b) Competitive procurement is the default method of procurement for major procurement above the thresholds, but procurement of individual consultants may be done on the basis of the consultant's qualifications even if the assignment is above the highest threshold of USD 2,000.</p> <p>(c) Fractioning of contracts is prohibited by Article 6(9), but the rules are inadequate as they only state that: "A procurement order shall not be divided into parts to lower the value of a procurement contract to avoid the application of the regulations and approval thresholds indicated in the Schedule unless there are justified reasons for that". Hence, it is not fully clear what time period should be used for calculating the thresholds and when there are "justified reasons" for not using them.</p> <p>(d) Thresholds for use of IPPDR are appropriate, but the lack of clear rules for the calculation of the contract value and the fact that the thresholds might be derogated under "justified reasons" means that the</p>	0	<p>The main issues regarding the legal framework are that the envisaged procuring entities have not been formally and fully established at the central level, and that the regulation is not well known/used at district level. Instead, the former Sudanese procurement rules may be used at the state level. This implies in itself that irregularities are abundant.</p> <p>Further, the IPPDR only permits the use of procurement if the public entity has been designated a procuring entity under the regulation. Otherwise, the procurement should be carried out by the Ministry of Finance on behalf of the public entity. Such a system could be functional if the Ministry of Finance had all the resources needed to carry out procurement on behalf of the Ministries, Departments or Agencies (MDAs) or any other public entities that are not designated procuring entities under the regulation. As it is, however, the resource situation does not allow the Ministry of Finance to carry out the needed number of procurements on behalf of other entities, and this leaves the public entities with no procuring clearance with little other option than to procure the relevant goods, works and services themselves under the IPPDR. In many instances single sourcing or direct purchasing is also used.</p> <p>The adoption of a new</p>

BLI indicator	BLI Score	Comment BLI	Compliance Score	Comment Compliance
		<p>regulation is not in-line with international standards.</p> <p>(a) partly met, (b) met, (c) not met, (d) not met</p>		procurement regime might help to overcome some of the very basic problems of the IPPDR and its practical application described above.
c) - Advertising rules and time limits	Scoring Criteria			
	<p>The legal framework meets the following conditions :</p> <p>(a) Requires that procurement opportunities other than sole source or price quotations be publicly advertised.</p> <p>(b) Publication of opportunities provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain documents and respond to the advertisement. Such timeframes are extended when international competition is sought.</p> <p>(c) Publication of open tenders is mandated in at least a newspaper of wide national circulation or in a unique Internet official site, that is easily accessible, where all public procurement opportunities are posted.</p> <p>(d) Content of publication includes sufficient information to enable potential bidders to determine their ability and interest in bidding.</p>		3	
	<p>The legal framework meets the conditions of (a) and (b) plus one of the remaining conditions.</p>			2
	<p>The legal framework meets the conditions of (a) plus one of the remaining conditions.</p>			1
	<p>The legal framework only meets the conditions of (a) above.</p>			0
	2	<p>(a) Public advertisement is required for all open works, consultancy service or goods tendering in national newspapers (in English or Arabic). Additional sources of advertising may also be used.</p> <p>(b) The timeframes applied and the content of the advertisements are mandated in the procurement rules are in line with international standards giving at least 4 weeks for goods and at least 6 weeks for works. The timeframe for consultancy shall under the IPPDR Article 51 "allow enough time for the consultants to prepare their proposals. The time allowed shall depend on the assignment but shall normally not be less than four weeks." This means that the IPPDR allows for undefined (short) periods between the advertisement and the submission on the bids in relation to consultancy service.</p> <p>(c) Publication of open tenders is mandated in at least one newspaper of wide national circulation. The IPPDR mandates that the charges of the procuring entity for the tender</p>	0	<p>The regulation of advertisements in the IPPDR is almost in line with international practice and it provides in most instances satisfactory time limits between the advertisement and the submission of bids.</p> <p>However, the CPAR mission witnessed a practice where contracts are very frequently awarded directly without any consideration as to the advertisement rules of the IPPDR. The CPAR mission was left with the impression that the procuring entities, due to poor control and enforcement, and despite significant efforts by the Procurement Policy Unit (PPU) of the MoFEP, often choose the convenient method, rather than the</p>

BLI indicator	BLI Score	Comment BLI	Compliance Score	Comment Compliance
		<p>documents shall reflect the cost of printing them and providing them to suppliers or contractors.</p> <p>(d) The published advertisements seem adequate and they provide sufficient information for a qualified determination of ability and interest in bidding. However, only a minority of the contracts are published in the first instance.</p> <p>(a) met, (b) partly met, (c) met, (d) met</p>		<p>most competitive method. Even when the advertisements rules are followed, it should be noted that the national media of South Sudan is still very young and that the challenge of distribution is clear obstacle.</p>
d) - Rules on participation and qualitative selection	Scoring Criteria			
	<p>The legal framework meets the following conditions:</p> <p>(a) Establishes that the participation of any contractor or supplier or group of suppliers or contractors is based on qualification or in accordance with international agreements; requires the use of a pass/fail basis for determining qualifications to the extent possible; limits domestic price preferential, if allowed, to a reasonable amount (e.g.15% or less); and requires justification for set asides that limit competition.</p> <p>(b) Ensures that registration, if required, does not constitute a barrier to participation in tenders and does not require mandatory association with other firms.</p> <p>(c) Provides for exclusions for criminal or corrupt activities, administrative debarment under the law subject to due process, or prohibition of commercial relations.</p> <p>(d) Establishes rules for the participation of government owned enterprises that promote fair competition.</p>			
	<p>The law and regulations meet the conditions of (a) and (b) plus one of the remaining conditions.</p>			
	<p>The law and regulations meet the conditions of (a) plus one of the remaining conditions.</p>			
	<p>The law and regulations do not meet the conditions of (a) through (d) above.</p>			
1	<p>(a) The IPPDR states that under Article 7 (qualification of tenders) "a tenderer in public procurement shall" and under subsection (vi) "meet such other criteria, as the Procuring Entity considers appropriate." While most of the specified factors of Article 7(1) concern the tenderer's qualifications, "meet such other criteria that the Procuring Entity considers appropriate" can potentially refer to anything. The Procuring Entity may also require tenderers to "provide appropriate documentary evidence or other information that it considers useful to satisfy that they are qualified in accordance with the criteria referred to in Sub- Regulation 7 (1)".</p> <p>The Procuring Entity <u>may</u> under the IPPDR disqualify a tender if it finds at any time that</p>		0	<p>Rules on participation and qualitative selection are hardly applied by line ministries who undertake procurement.</p> <p>In practice, registration is required to take part in procurement. It is not clear whether this constitutes a barrier, but it seems that association of foreign companies with local companies is a common practice. Foreign companies registering in Southern Sudan without having a physical presence in the country is also a</p>

BLI indicator	BLI Score	Comment BLI	Compliance Score	Comment Compliance
		<p>the information submitted concerning the qualifications of the tender was materially inaccurate or incomplete. This wording seems to leave at least some element of discretion in relation to whether or not a tenderer shall be disqualified.</p> <p>Domestic preference is allowed in IPPDR 39 at a margin of 15% for goods and 7½% for works.</p> <p>There is no requirement for specific justifications in the bidding documents.</p> <p>(b) The IPPDR does not require formal registration etc.</p> <p>(c) The IPPDR stipulates that the tenderers may not "have Directors or Officers in any country who have been convicted of any criminal offence relating to their professional conduct or making false statements or misrepresentations as to their qualifications to enter into a procurement contract, within a period of five years preceding the commencement of the procurement proceedings". However, the IPPDR does not contain regular black-list or debarment clauses for companies that have been engaged in criminal activities.</p> <p>(d) Government owned enterprises participate in procurement procedures on equal terms with private bidders, but there are no rules or control mechanisms to counter unfair competition and subsidisation of government owned enterprises.</p> <p>(a) partly met, (b) not met, (c) met, (d) not met</p>		common practice.

		Scoring criteria		
e) - Tender documentation and technical specifications		<p>The legal framework meets the following conditions:</p> <p>(a) Establishes the minimum content of the tender documents and requires that content is relevant and sufficient for tenderers to be able to respond to the requirement.</p> <p>(b) Requires the use of neutral specifications citing international standards when possible.</p> <p>(c) Requires recognition of standards which are equivalent when neutral specifications are not available.</p>		
		<p>The legal framework substantially meets the conditions of (a) plus one of the remaining conditions.</p>		3
		<p>The legal framework meets the conditions of (a).</p>		1
		<p>The content of the bidding documents is totally or largely left at the discretion of the procuring entity.</p>		0
3		<p>(a) Article 29 of the IPPDR requires the procuring entities to “use the appropriate standard tender documents. In case adequate national standard documents are not available, alternative good quality tender documents may be used for the purpose such as the World Bank’s Standard Bidding Documents.”</p> <p>(b) The IPPDR stipulates that the “description of goods, works or services shall be based on objective technical and quality characteristics of the goods, works or services to be procured and there shall be no requirement of or reference to a particular trade mark, name, patent, design, type, specific origin or producer, unless a precise or intelligible way of describing the characteristics of the goods, works or services to be procured does not exist, in which case, the words “or equivalent” shall be included.” Further, “Standardized trade terms, such as those stated in the INCOTERMS, shall be used in formulating the terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings, and in formulating other relevant aspects of the pre-qualification documents, invitation of proposals, offers or quotations.”</p> <p>(c) See above.</p> <p>(a) met, (b) met, (c) met</p>	0	<p>The CPAR mission has identified a very low capability amongst the procuring entities to draft adequate specifications of requirements at both the central and local level. It is frequently seen in South Sudan that inadequate specifications lead to renegotiations of the contracts or just an output with a lower quality than envisaged by the procuring entity.</p> <p>Further, there are examples of tailored specifications where a preferred bidder is in fact indicated despite the formulations in the legal framework.</p>

		Scoring Criteria	
f) - Tender evaluation and award criteria		<p>The legal framework mandates that:</p> <ul style="list-style-type: none"> <li>(a) The evaluation criteria are relevant to the decision, and precisely specified in advance in the tender documents so that the award decision is made solely on the basis of the criteria stated in the tender documents.</li> <li>(b) Criteria not evaluated in monetary terms are evaluated on a pass/fail basis to the extent possible.</li> <li>(c) The evaluation of proposals for consulting services gives adequate importance to the quality and regulates how price and quality are considered.</li> <li>(d) During the evaluation period, information relating to the examination, clarification and evaluation of tenders is not disclosed to the participants or to others not involved officially in the evaluation process.</li> </ul>	3
<p>The legal framework covers the conditions of (a) and (b) plus one of the remaining conditions.</p>			2
<p>The legal frame work covers (a) but does not fully cover the other conditions.</p>			1
<p>The legal framework does not adequately address any of the conditions (a) through (d) above</p>			0
1	<ul style="list-style-type: none"> <li>(a) The evaluation criteria are spelled out in Article 38 of the IPPDR and the successful tender shall "be the tender with the lowest evaluated tender price. The lowest evaluated tender ascertained on the basis of criteria specified in the invitation documents. The criteria shall be objective and quantifiable and given relative weight in the evaluation procedure or expressed in monetary terms where practicable, if the Procuring Entity has so stipulated in the invitation documents."</li> <li>(b) Article 8 indirectly concerns this matter but it does not clearly specify whether a pass/fail basis should be applied.</li> <li>(c) The IPPDR stipulates that consultancy services from firms are done under QBS-principles, but the use of qualitative selection is allowed in relation to the procurement of individual consultants.</li> <li>(d) Article 51(3) of the IPPDR stipulates that after the closing date and time for the submission of proposals, the appropriate proposal evaluation panel of the Procuring Entity shall open the technical proposals immediately after the deadline for the submission of proposals. The financial proposals shall remain sealed until they are opened publicly. Further, Article 55 states that "The Procuring Entity shall treat proposals and any negotiations on selection procedure as confidential and avoid the disclosure of their contents to competing consultants. A</li> </ul>	0	<p>Bid evaluations are not well established. There is no common practice between the different ministries on how the evaluations are carried out, and all possible approaches have been reported.</p> <p>Evaluation criteria are usually specified in the tender documents, but in broad and generic terms.</p> <p>Criteria are usually evaluated on a pass/fail basis.</p> <p>There is no well established or clear practice on how quality and price are considered.</p> <p>In most cases, there is no distinction between the Tender Evaluation Panel and the Procurement Committee. Risks of conflict of interest, information leak and exercise of undue influence on the Evaluation Panel are very high.</p> <p>It is not always clear how the final award decision is taken. There are instances where the recommendations of the evaluation committees have</p>

		party to the negotiations shall not reveal to any other person any technical, price or other information relating to the negotiations without the consent of the other party.”  (a) met, (b) not met, (c) met, (d) met		been ignored or “bent”.
g) – Submission, receipt and opening of tenders	Scoring Criteria			
	<p>The legal framework provides for the following conditions:</p> <p>(a) Public opening of tenders in a defined and regulated proceeding immediately following the closing date for bid submission.</p> <p>(b) Records of proceedings for bid openings are retained and available for review.</p> <p>(c) Security and confidentiality of bids is maintained prior to bid opening, and disclosure of specific sensitive information during debriefing is prohibited.</p> <p>(d) The modality of submitting tenders and receipt by the government is well defined to avoid unnecessary rejection of tenders.</p>		3	
	The legal framework provides for (a) and (b) plus one of the remaining conditions.		2	
	The legal framework provides for (a) plus one of the remaining conditions.		1	
	There is no requirement in the legal framework for public opening of tenders.		0	
2	<p>(a) The technical proposal shall under the IPPDR be opened immediately after the deadline and the financial proposals must be opened publicly.</p> <p>(b and c) Records of bid opening ceremonies are part of the mandatory procurement file and there are well defined procedures covering security, confidentiality, and submission of regular paper bids. However, the IPPDR also allows submission of a tender in electronic form and only states the requirement that “as may be specified in the tender documents that provide a record of the contents of the tender and a similar degree of authenticity, security and confidentiality.” The low technical capability means that the use of sound electronic procurement might be very difficult.</p> <p>(d) The modality of submitting tenders and receipt by the government is not clearly defined in the IPPDR</p> <p>(a) met, (b) met, (c) met, (d) not met</p>	0	<p>Tenders are received either by the Procurement Unit or the Undersecretary – depending on the ministry and/or the contract to be awarded.</p> <p>There is no established practice on the length of the period of time between the deadline for submission and the date of opening. It has been reported that bids are not always opened immediately and sometimes they are not opened at all, and additional bids can even be accepted after the deadline.</p> <p>Tender openings, when organised, are said to be public. Whenever possible, the PPU tries to attend tender openings and assists to retain records.</p>	

		Scoring Criteria	
h) – Complaints system structure and sequence	<p>The legal framework provides for the following:</p> <ul style="list-style-type: none"> <li>(a) The right to review for participants in a procurement process.</li> <li>(b) Provisions to respond to a request for review at the procuring/agency level with administrative review by another body independent from the procuring agency that has the authority to grant remedies and includes the right for judicial review.</li> <li>(c) Establishes the matters that are subject to review.</li> <li>(d) Establishes timeframes for issuance of decisions by the procuring agency and the administrative review body.</li> </ul>	3	
	<p>The legal framework provides for (a) and (b) plus one of the remaining conditions.</p>	2	
	<p>The legal framework provides for (a) plus one of the remaining conditions.</p>	1	
	<p>The right for review of the proper application of the procurement process is not provided in the legal framework.</p>	0	
1	<p>(a) The IPPDR provides bidders and applicants with a right to lodge a complaint.</p> <p>(b) There are currently no procedures for review by an independent body. The IPPDR indicates that the complaint should be handled in the first instance by the procuring entity with a possible right to “appeal” to the procurement policy unit under the Ministry of Finance. The procurement policy unit may <i>recommend</i> suspension of procurement proceedings, termination of contract, criminal proceedings taken against erring parties, surcharge, suspension or dismissal of erring officials of the Procuring Entity and any other appropriate remedies.</p> <p>The decision of the Procurement Policy Unit is final.</p> <p>(c) The IPPDR generally does not restrict the subjects over which complaints may be lodged, but in decisions taken by the procuring entity under Regulation 27 to reject tenders, proposals, offers or quotation, selection of a procurement procedures shall not be subject to review. Further it is stated that “No frivolous or vexatious complaint shall be attended by the Procuring Entity”. The IPPDR does not, however, contain a clear definition as to when a complaint is vexatious meaning that the exception might be used even in a case where the vexatious nature of the complaint is not evident.</p> <p>(d) Timeframes are established for each step in the review process.</p> <p>(a) met, (b) not met, (c) not met, (d) met</p>	0	<p>In practice practically no complaints are placed, and the CPAR mission has not been able to identify any examples of effective complaints handling. If any, complaints are handled informally.</p>

Indicator 2: Existence of Implementing Regulations and Documentation			
a) – Implementing regulation that provides defined processes and procedures	Scoring Criteria		
	<p>There are regulations that supplement and detail the provisions of the procurement law that meet the following requirements:</p> <ul style="list-style-type: none"> <li>(a) They are clear, comprehensive and consolidated as a set of regulations available in a single and accessible place.</li> <li>(b) They are updated regularly.</li> <li>(c) The responsibility for maintenance is defined.</li> </ul>		
	<p>The regulations meet the conditions of (a) plus one of the remaining conditions.</p>		
	<p>The regulations exist but there is no regular updating, the responsibility for updating is not clearly defined or there are many important omissions in the regulations or inconsistencies with the law.</p>		
	<p>There are no regulations or the existing ones do not meet substantially any of the requirements listed above.</p>		
0	<ul style="list-style-type: none"> <li>(a) The IPPDR does not mandate any further regulations, and no further regulation has been issued under the IPPDR.</li> <li>(b) See (a) above</li> <li>(c) see (a) above</li> </ul>	N/A	N/A (compliance covered by corresponding BLI)
b) – Model tender documents for goods, works, and services	Scoring Criteria		
	<ul style="list-style-type: none"> <li>(a) There are model invitation and tender documents provided for use for a wide range of goods, works and services procured by government agencies.</li> <li>(b) There is a standard and mandatory set of clauses or templates that are reflective of the legal framework, for use in documents prepared for competitive tendering.</li> <li>(c) The documents are kept up to date with responsibility for preparation and updating clearly assigned.</li> </ul>		
	<p>Model documents and a minimum set of clauses or templates are available, but the use of such documents is not mandatory or regulated. The documents are not updated regularly.</p>		
	<p>Model documents are not available, but a set of mandatory clauses is established for inclusion in tender documents.</p>		
	<p>There are no model documents and the procuring entities develop their own documents with little or no guidance.</p>		
0	<ul style="list-style-type: none"> <li>(a) There are no model invitation and tender documents issued under the IPPDR.</li> <li>(b) See (a) above.</li> <li>(c) see (a) above.</li> </ul>	0	There is no model invitation issued under the IPPDR. The IPPDR mentioned in Article 29 that the Standard Bidding Document of the World Bank might be used "in case"

				adequate national documents are not available", but the standard document of the Bank is seldom used in practice.
c) – Procedures for prequalification	Scoring Criteria			
	Procedures exist that define prequalification which:			
	(a) Provide for limitations on the content of prequalification criteria that are based on the needs of the specific procurement.			3
	(b) Specify the use of pass/fail for application of qualification criteria.			
	(c) Provide guidance on when to apply a prequalification procedure.			
	Procedures exist that cover (a) plus one of the remaining conditions.			2
	Procedures exist that cover (a).			1
	Procedures for the application of prequalification procedures do not exist.			0
	(a) Articles 8 and 28(2) of the IPPDR provide adequate limitations in the content of prequalification in line with international best practice.  3 (b) Article 8 of the IPPDR stipulates that all tenderers that meet the prequalification criteria shall be invited to submit tenders.  (c) Article 8 of the IPPDR provides relevant guidance on prequalification.	0	In practice, practically no pre-qualification procedures are used, and the CPAR mission has not been able to identify any examples of effective pre-qualification procedure.	
d) – Procedures for contracting for services or other requirements in which technical capacity is a key criterion	Scoring Criteria			
	The legal framework and its implementing regulations provide for the following:			
	(a) Conditions under which selection is based exclusively on technical capacity are appropriate and when price and quality considerations are appropriate.			3
	(b) Clear procedures and methodologies for assessment of technical capacity and for combining price and technical capacity under different circumstances.			
	Implementing regulations meet (a) above but leave (b) to the discretion of the procuring entity.			2
	Implementing regulations leave the possibility of use of technical capacity in selection but neither the law nor the regulations elaborate on the procedure.			1
	Neither the law nor implementing regulations cover this procedure.			0
	(a) Article 50 of the IPPDR contains conditions for use of methods of selection of consultants. The conditions are generally clear but have some elements that are not in line with international best practice, including, for instance, the possibility to select the same consultant (without tendering) in follow-up assignments.  2			

	(b) The conditions for evaluating the technical capacity and for combining price and technical capacity are allowed (Article 47), but a substantial element of discretion is left to the procuring entity.		
e) – User's guide or manual for contracting entities	<b>Scoring Criteria</b>		
	(a) There is a unique procurement manual detailing all procedures administration of procurement regulations and laws.		3
	(b) The manual is updated regularly.		
	(c) The responsibility for maintenance of the manual is clearly established.		
	There is no unique manual but there is an obligation for the procuring agencies to have one that meets conditions (b) and (c).		2
	There is no manual and no obligation to have one, but many procurement agencies have an internal manual for administration of procurement.		1
	There is no manual or requirement to have one.		0
	(a) There has not been issued any procurement manual detailing the procedures of the IPPDR.  (b) See (a) above.  (c) See (a) above.	0	No central procurement manual detailing the administration of the procurement regulations has been issued.  The PPU has developed a manual of procurement procedures to be used as a supportive document for procurement trainings at the Government Accountancy Training Centre (GATC).
f) – Existence and coverage of General Conditions of Contracts (GCC) for public sector contracts	<b>Scoring Criteria</b>		
	Both of the following apply:		
	(a) There are GCC for the most common types of contracts and their use is mandatory.  (b) The content of the GCC is generally consistent with internationally accepted practice.		3
	There are GCC for the most common types of contracts, consistent with international practice, but their use is not mandatory.		2
	There are GCC for the most common types of contracts but they do not conform to internationally accepted practice and their use is not mandatory.		1
	There are no GCC, and individual agencies use the form of contract of their choice.		0
	GCC are for the most common types of contracts, but they have some deviations from internationally accepted standards and norms and their use is not mandatory.	0	As GCC have not been issued, they cannot be applied in practice.

<b>Pillar II – Institutional Framework and Management Capacity</b>			
<b>Indicator 3:</b> <b>The public procurement system is mainstreamed and well integrated into the public sector governance system</b>			
Scoring Criteria			
There is a regular planning exercise instituted by law or regulation that: <ul style="list-style-type: none"> <li>• starts with the preparation of multiyear plans for the government agencies, from which annual operating plans are derived;</li> <li>• is followed by annual procurement plans and estimations of the associated expenditures; and</li> <li>• culminates in the annual budget formulation.</li> </ul> Procurement plans are prepared in support of the budget planning and formulation process.		3	
The majority of procurement plans are prepared based on the annual and multiyear operating plans independently from budget allocation, but they are revised to meet the forward budget estimates for the sector or agency allocations before expenses are committed.		2	
Procurement plans are normally prepared based on the annual and multiyear operating plans. Links with budget planning are weak and plans are not required to match the budgetary allocation available before expenses are committed.		1	
There is no integrated procurement and budget planning of the nature described. Procurement plans are drawn without obvious and direct connection with the budget planning exercise, and there is no requirement to match procurement plans with the availability of funds before expenses are committed.		0	
1	Article 6 (1) of the IPPDR requires that “a Procuring Entity shall prepare a Procurement Plan to support every program of a User Ministry, Department or Agency,” but no multiannual plan is prescribed.  The PPU has prepared a template for the procurement plans. This template requires information on the procurement method, the budget, and planning including the required procurement steps and indicative milestones for the management of the contract. A number of MDAs were visited by the PPU procurement officers and encouraged to prepare this plan in accordance with the annual budget.  The Procurement Agent of the PPU (Frannan International) has been a driving force in this initiative.	1	A majority (35 out of 56) of MDAs have adopted a procurement plan in 2011, with the active support of the PPU procurement officers and procurement agent.  The preparation of procurement plans by the MDAs is not systematic.  The links between procurement and budget planning exist, but they are weak. Procurement plans are prepared separately and usually after the annual planning and budgeting exercise is accomplished. Hence, the preparation of procurement plans appears to be somehow disconnected to the actual planning process.

			<p>When available, procurement plans are known and used by the procurement units only. There is no or little awareness of such plans in other departments of the MDAs.</p> <p>Procurement plans are hardly followed up and/or updated. The needs of the users in the MDAs are usually discussed on an ad hoc basis. Decisions are based on the budget plans (to be checked by the MoFEP) or availability of funds (to be checked by the Directorate for Finance in the MDAs).</p> <p>All things considered, the procurement plans are hardly used as effective planning and management tools.</p>	
<p>b) – Budget law and financial procedures support timely procurement, contract execution, and payment.</p> <p>0</p>		<p>Scoring Criteria</p>		
		<p>Budget and financial procedures in place meet the requirements of (a) to (c).</p>		3
		<p>Budget and financial procedures in place meet the requirements of (a), but there are no published business standards. Authorization of payments is generally timely.</p>		2
		<p>Procedures in place take longer than stated in (a), and conditions (b) and (c) are not generally met.</p>		1
		<p>The procedures in place do not meet the requirements in a material way.</p>		0
		<p>(a) There is no formal commitment of funds within 1 week from signing a contract.</p> <p>(b) The standards for the processing of invoices by the government are not streamlined with contract obligations. According to the 2009 Payment Procedures, “the standard turn-around time for processing of a claim is five working days”.</p> <p>(c) Payment procedures are loosely applied; payment delays are the norm and can exceed several months.</p> <p>(a) not met, (b) partly met, (c) not met</p>	<p>N/A</p>	<p>N/A covered by BLI</p>

Scoring Criteria				
c) – Procurement actions not initiated without budget appropriations		The system meets requirements (a) [The law requires certification of availability of funds before solicitation of tenders takes place] and (b) [There is a system in place (e.g. paper or electronic interface between the financial management and the procurement systems) that ensures enforcement of the law].	3	
The system meets requirement (a), but requirement (b) is not fully enforced due to weaknesses in the system.			2	
The system meets requirement (a) only.			1	
There system does not meet requirements (a) and (b).			0	
1	(a) Both the IPPDR 2006 (Schedule A) and the 2011 Appropriation Bill set thresholds above which MDAs should not enter into any contractual arrangement without receiving written confirmation from the MoFEP, which should ensure that sufficient funds are available from the balances against its budgetary appropriation to finance the contract.  (b) There is no system in place that ensures enforcement of the law.  (a) met (b) not met	0	The interface between the financial management and the procurement functions is extremely limited. The “letter of no objection”, issued as an approval by the MoFEP of the procurement process for each procurement action, is issued after a procedural check. As part of this review, the PPU checks whether the procurement proceeding is mentioned in the procurement planning and/or if it is in accordance with the approved budget.  The “letter of no objection” does not seem to be a requirement for the authorization of payment claims.	
Scoring Criteria				
d) – Systematic completion reports are prepared for certification of budget execution and for reconciliation of delivery with budget programming.		The procurement system is sufficiently integrated with the financial management and budgetary systems to provide information on the completion of all major contracts.	3	
Information on completion of the majority of large contracts is submitted.			2	
Information on the completion of contracts is erratic or is normally submitted with considerable delay after the fiscal budgetary period.			1	
The procurement system does not generally provide this information.			0	
0	Completion reports are not mandatory and there is no established practice on contract management.  There is no system that collects or provides information on completion of major contracts.	0	Contract management responsibilities are unclear and decided on a case by case basis: user departments or procurement units in the central MDAs, or officers in the state administration, can be involved in the supervision	

			<p>or administration of the contract.</p> <p>Completion reports are not a common practice in the MDAs; instead, the contract manager or supervising officer signs a certificate of completion for the purpose of supporting a payment request.</p> <p>Procurement files in the MDAs' procurement units do not contain certificates of completion or any other documentation linking payments with performance.</p>	
<b>Indicator 4:</b> <b>The country has a functional normative/regulatory body</b>				
<p>a) –</p> <p>Normative/regulatory functions are established and assigned (to one or several agencies) in the legislative and regulatory framework</p>	<b>Scoring Criteria</b>			
	<p>There is a normative or regulatory body, or the functions are clearly assigned to various units within the government that are specified in the legal and regulatory framework in an unambiguous way without gaps or overlaps.</p>			3
	<p>There is a regulatory body or functional designation to various units within government, but it is not established as part of the legal and regulatory framework and there are gaps or overlaps of regulatory responsibilities.</p>			2
	<p>Only part of the functional responsibilities of a regulatory body are assigned throughout the government, leaving significant parts of the work unassigned.</p>			1
	<p>Separate functional responsibilities to regulate the procurement system are not recognized as part of the legal and regulatory framework and are not effectively performed.</p>			0
<p>2</p>	<p>In article 4 (3), the IPPDR refers to a "Public Procurement Reform" that "is to put in place a comprehensive public procurement legislation". However, it does not clearly designate a normative or regulatory body to conduct this reform.</p> <p>Also, article 60 of the IPPDR stipulates that "these Interim Regulations may be amended by the Council of Ministers of the Government of Southern Sudan on the recommendation of the Minister of Finance and Economic Planning."</p> <p>The IPPDR is not clear on who should take the initiative in preparing a new legal framework. However, on the basis of the IPPDR, the MoFEP has undertaken the drafting of a new Public Procurement Bill and Regulations.</p> <p>In practice, the Ministry of Legal Affairs and</p>	<p>N/A</p>	<p>N/A - covered by sub-indicator 4c</p>	

		Constitutional Development (MoLACD) also plays a role in preparing new legislation. This has been a source of squabbling between the two ministries, which tend to shift the blame to each other for the lack of progress on the bill.		
b) – The responsibilities include at least those required in this sub- indicator (see description of the indicators and sub-indicators)	Scoring Criteria			
		All the eight functions listed in the sub-indicator are clearly assigned to one or several agencies without creating gaps or overlaps in responsibility. The eight functions are (1) providing advice to contracting entities; (2)drafting amendments to the legislative and regulatory framework and implementing regulations; (3) monitoring public procurement; (4) providing procurement information; (5) managing statistical databases; (6) reporting on procurement to other parts of government; (7) developing and supporting implementation of initiatives for improvements of the public procurement system; and (8) providing implementation tools and documents to support training and capacity development of implementing staff)	3	
		At least five functions are assigned to an appropriate agency or agencies, and there is no overlap or conflict in responsibilities.	2	
		Four or fewer functions are assigned to appropriate entities and there are overlaps and conflicts in responsibilities.	1	
		Functions are not clearly assigned and/or assignments are often in conflict with other agency responsibilities.	0	
0	Article 5(4) of the IPPDR stipulates that the PPU “shall enhance soundness of public procurement management by establishing standards, monitoring of public procurement processes, and advising the Government on appropriate actions to be taken in cases of non-compliance, fraud and corruption and how to deal with complaints”. Hence, while the eight listed functions are <i>potentially</i> the responsibility of the PPU, this is not explicit, and overlaps and conflicts are possible.	1	Evidence shows that functions (1), (2), (3) and (8) are partly exercised by the PPU (or the MoFEP).  (1) The PPU provides advice and support to MDAs in their procurement activities. This support can be continuous (follow-up of a procurement proceeding from the start to the end of the process) or punctual (support to the preparation of procurement plans, drafting of contracts and help desk service).  (2) The MoFEP has undertaken the preparation of a Public Procurement Bill and Regulations. The process has been facing difficulties and is in suspense.  (3) Monitoring public procurement: The PPU carries out a compliance check of procurement processings. The review aims to verify that the procurement activities	

			<p>comply with the provisions of the IPPDR in terms of planning and budgeting, procurement methods, tender documents and contract, opening and evaluation processing, and the overall integrity and transparency of the tender process. When a procurement proceeding is approved, the PPU issues a "letter of no objection".</p> <p>(8) The PPU publishes and disseminates hard copies of the IPPDR. It has developed standard bidding documents (no legal status). It supports the training activities in the Government Accountancy Training Centre (GATC).</p> <p>In practice, the PPU faces serious obstacles to exercise its statutory oversight function (see also sub-indicator 4b).</p> <p>There is a lack of a central information system for collecting data monitoring procurement activities.</p> <p>Some activities undertaken by the Ministry of Legal Affairs and Constitutional Development (MoLACD) to support public procurement in the MDAs overlap with the role of the MoFEP. Following the 2011 Appropriation Bill, the MoLACD applied a mandatory requirement that all contracts pass its Directorate of Contract for authorization (for a fee). In addition, it also provides advice and services in drafting contracts and carries out a full compliance check of the procurement processings.</p>
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		Scoring Criteria		
c) – Adequacy of organization, funding, staffing, and level of independence and authority (formal power) to exercise the duties under (b).		The regulatory body (or the assignment of responsibilities for the regulatory function if there is not a body) is at an adequate level in Government, and financing is secured by the legal/regulatory framework.		3
The regulatory body is at an adequate level but financing is subject to administrative decisions and can be changed easily.				2
The level of the body is too low or financing is inadequate for proper discharge of its responsibilities.				1
The level of the body is low, financing is inadequate and the body has no or little independence to perform its obligations.				0
0	The IPPDR empowers the MoFEP to take an overarching role in public procurement in Southern Sudan.  In practice, the procurement function of the MoFEP is fulfilled by the Directorate of Procurement, which includes the PPU. It has no particular level of independence compared with other Directorates in the MoFEP. The PPU reports to the Director of Procurement who in turns reports to the Undersecretary of Finance.  The Directorate's resources, and <i>a fortiori</i> the PPU's resources, are not secured by any regulatory framework and are subject to annual budget approval.	N/A		
	Although article 4(4) of the IPPDR stipulates that it is the responsibility of the MoFEP to designate procuring entities, all MDAs process procurement without being formally authorized to do so. Also, without the MDAs willingness to cooperate, the PPU has limited possibilities to play its role.  Finally, despite the central role and the high degree of expertise it is supposed to provide, the PPU does not have sufficient human resources to fully undertake its role. In particular, none of the 10 newly recruited officers had knowledge or experience in public procurement before joining the team. So far, the PPU has been highly dependent on the Procurement Agent.			

d) – Separation and clarity so as to avoid conflict of interest and direct involvement in the execution of procurement transactions.	Scoring Criteria		
	The body meets the requirement: The body is not responsible for direct procurement operations and is free from other possible conflicts (e.g. by being member of evaluation committees, etc.).		3
	N/A		2
	N/A		1
	The body does not meet the requirement as stated above.		0
0	According to article 4(4) of the IPPDR, “all Procurement will be processed by the Procurement Unit of the Ministry of Finance & Economic Planning.”  This PU seems to be a different body than the PPU, but this is not explicitly stated in the regulation. This is a source of confusion among the members of the PPU about what their role should be.  The IPPDR includes no provision preventing the participation of the PPU in the execution of procurement transactions.	0	Depending on whether it has been invited to do so by the user MDAs, the PPU can be actively involved in supporting the procurement process including (1) the preparation of tender documents and contracts and (2) participation in the bid openings and evaluations on an ad-hoc basis.  So, without being responsible for direct procurement operations, the procurement unit is not free from possible conflicts of interest.  There is a tendency among the members of the PPU to believe that they should be responsible for all procurement transactions.
<b>Indicator 5:</b> <b>Existence of institutional development capacity</b>			
a) – System for collecting and disseminating procurement information and accessibility	Scoring Criteria		
	There is an integrated information system that provides, as a minimum, up-to-date information as described above and is easily accessible to all interested parties at no or minimum cost. Responsibility for its management and operation is clearly defined.		3
	There is an integrated system of the characteristics described that provides up-to-date information for the majority of contracts at the central government level, but access is limited.		2
	There is a system, but it only provides information on some of the contracts, and the system accessibility is limited.		1
	There is no procurement information system except for some individual agency systems. Entities keep information on contract awards and some statistics.		0
	0	There is no procurement information system for collecting and disseminating procurement	N/A
			N/A - compliance covered by

		information and accessibility either in the MoFEP or in the MDAs.		BLI
b) – Systems and procedures for collecting and monitoring national procurement statistics	Scoring Criteria			
	The country has a system that meets the four requirements (a) through (d) listed.			
	(a) There is a system in operation to collect data.			
	(b) The system collects data on procurement by method, duration of different stages of the procurement cycle, awards of contracts, unit prices for the most common types of goods and services, and other information that allows analysis of trends, levels of participation, efficiency and economy of the purchases and compliance with requirements.			3
	(c) Reliability of information is high (verified by audits).			
	(d) Analysis of information is routinely carried out, published, and fed back into the system.			
	The country has a system that meets (a) plus two of the remaining conditions.			2
	The system is in place to meet (a) plus one of the remaining conditions.			1
	There is no statistical data collection system in place.			0
0	There is no system or procedure for collecting and monitoring national procurement statistics, neither in the MoFEP nor in the MDAs.  (a) not met, (b) not met, (c) not met, (d) not met	N/A	N/A - compliance covered by BLI	
c) – Strategy and training capacity to provide training, advice and assistance to develop the capacity	Scoring Criteria			
	There is a training and capacity building strategy that provides for:			
	(a) Substantive permanent training programs of suitable quality and content for the needs of the system.			
	(b) Evaluation and periodic adjustment based on feedback and need.			3
	(c) Advisory service or help desk to resolve questions by procuring entities, suppliers, contractors and the public.			
	There is a training and capacity building strategy that provides for (a) above.			2
	The existing program is of poor quality and insufficient to meet the needs of the system, and there is no procurement help desk or advisory service.			1
	No formal training or help desk programs exist.			0
1	(a) Procurement Officers can receive training through three different channels:  - Basic and intermediate training in procurement at the Government Accountancy Training Centre (GATC). PricewaterhouseCoopers currently provides training in financial management and procurement at the Centre.	1	Significant efforts are made to train procurement staff. Most of the Procurement Officers interviewed have received training in procurement.  Training and capacity building efforts in the field of procurement are poorly coordinated. Decisions	

		<ul style="list-style-type: none"> <li>- Advance trainings in procurement in various training institutes in neighbouring countries. Frequently mentioned is the Eastern and Southern African Management Institute (ESAMI, in Nairobi)</li> <li>- Ad-hoc and on-the-job procurement training delivered by the PPU Procurement Agent specialists (Frannan International).</li> </ul> <p>However, there is no comprehensive training and capacity building strategy in the field of procurement, and the MoFEP has limited leadership on this. Hence, the needs exceed the available programme.</p> <p>(b) Although trainings are in principle subject to an evaluation by the participants in the end of the cycle, there is no systematic evaluation and monitoring system in place at the overall or individual levels.</p> <p>(c) The PPU acts as procurement help desk and advisory service to the MDAs, who carry out procurement operations.</p> <p>(a) partly met, (b) not met, (c) met</p>		<p>regarding training are taken on a case-by-case basis, guided by short-term needs.</p> <p>The relatively high turnover of procurement staff is detrimental to the procurement capacity building efforts.</p>
d) – Quality control standards and staff performance evaluation for capacity development		Scoring Criteria		
		The procurement system complies with (a) through (c).		
		(a) Provide quality assurance standards and a monitoring system for procurement processes and products		3
		(b) Provide for a staff performance evaluation process based on outcomes and professional behaviors.		3
		(c) Ensure that operational audits are carried out regularly to monitor compliance with quality assurance standards.		3
		The procurement system complies with (a) and (b) above but there is no regular auditing to monitor compliance.		2
		The procurement system has quality standards but does not monitor nor use the standards for staff performance evaluation.		1
		The system does not have quality assurance or staff performance evaluation systems.		0
0		<p>(a) The system does not have any quality assurance standards or monitoring system for procurement processes and products.</p> <p>Initiatives taken by the PPU to promote standards, procedures, and good practice are not binding; they are hardly implemented and weakly monitored.</p> <p>(b) The system does not have any staff performance evaluation process.</p> <p>(c) There is no formal operational audit taking place. Compliance with the IPPDR disposals</p>	N/A	N/A (compliance covered by corresponding BLI)

		is checked by the PPU before issuing a "letter of no objection" but the criteria used for the compliance checks are not formalized.		
		<b>Pillar III – Procurement Operations and Market Practices</b>		
		<b>Indicator 6:</b>  <b>The country's procurement operations and practices are efficient</b>		
a) – Adequacy of procurement competence among government officials		Scoring Criteria		
		(a) There are defined skill and knowledge profiles for specialized procurement jobs.  (b) There is systematic matching of skills against requirements for competitive recruitment.  (c) Staff required to undertake procurement activities on an ad-hoc basis have the knowledge they need to undertake the activity or have access to professional staff that can provide this knowledge.	3	
		The system meets the requirements (a) through (c) listed above.		
		The system meets (a) plus one of the remaining conditions.	2	
		The system only meets (a) above.	1	
		The system does not meet any of the requirements.	0	
0		(a) There is no job description defining the skills and knowledge profiles for procurement jobs.  (b) So far, the approach to matching skills against requirements has been pragmatic. Procurement officers have various backgrounds, but most frequently they hold a degree in accountancy. When recruited, procurement officers hardly have any specialised skills or knowledge of public procurement.  (c) In most of the line ministries, a procurement unit has been set up. The competencies of the members of these units vary to a high extent. Interviews show that senior procurement staff has an appropriate level of knowledge and skills. Procurement officers receive support from technical assistants internally (consultants assigned to MDTF procurement in the PU) and from the PPU (on demand). Procurement officers in the line ministries are regularly trained.  (a) not met, (b) not met, (c) partly met	N/A	N/A (compliance covered by corresponding BLI)

Scoring Criteria			
b) – Procurement training and information programs	<p>(a) Training programs' design is based on a skills gap inventory to match the needs of the system.</p> <p>(b) Information and training programs on public procurement for private sector are offered regularly either by the government or by private institutions.</p> <p>(c) The waiting time to get into a course (for public or private sector participants) is reasonable, say one or two terms.</p> <p>The training and information programs available meet all the requirements listed in (a) through (c) above.</p>	3	
	<p>The training programs are sufficient in terms of content and frequency (waiting time) for government participants but there are few information programs for the private sector.</p>	2	
	<p>There are training programs, but they are deficient in terms of content and supply.</p>	1	
	<p>There is no systematic training or information program for public or private sector participants.</p>	0	
1	<p>(a) Training programs in public procurement, which are delivered locally by the GATC, are based on the IPPDR. In principle, the current curricula have been developed in cooperation with the University of Juba and the PPU. However, although cooperation exists, there is a limited sense of ownership by the University of Juba or the PPU procurement officers of the trainings delivered at the GATC. More cooperation would ensure that trainings are practical and highly relevant to the needs.</p> <p>(b) No information and training program on public procurement for the private sector is offered by the government or private institutions. The Chamber of Commerce makes efforts to raise awareness of the enterprises; however, such efforts are made on an ad-hoc basis rather than with the support of elaborated programmes.</p> <p>(c) The waiting time to get into a course seems reasonable, as no interviewee has mentioned it as a constraint. However, one should have in mind that demand is low.</p> <p>(a) partly met, (b) not met, (c) partly met</p>	N/A	N/A (compliance covered by corresponding BLI)
c) – Norms for the safekeeping of records and documents related to transactions and contract management	<p>The procurement system complies with the requirements (a) through(d) listed above</p> <p>The procurement system complies with requirements (a), plus two of the remaining conditions.</p> <p>The procurement system complies with (a) but not with the rest.</p>	3	

	There is no mandatory list of documents or retention policy leaving it to the discretion of the procuring entity.			0
	0	There is no established norm for the safekeeping of records documents related to transactions and contract management.  (a) not met, (b) not met, (c) not met, (d) not met	0	The retention policy is left to the discretion of the procuring entity.  The PPU keeps all "letters of no objection" but it does not have the capacity to keep procurement records (no IT system, no space in the office).  PUs in the line ministries have diverging practices in terms of which documents are systematically kept. Usually, procurement files include key documents only (such as bid evaluation reports, if any); they do not include documents relating to contract management and payment (this is deemed to be the responsibility of the user departments in the MDAs).
d) – Provisions for delegation of authority	Scoring Criteria			
	(a) Delegation of decision making authority is decentralized to the lowest competent levels consistent with the risks associated and the monetary sums involved.  (b) Delegation is regulated by law.  (c) Accountability for decisions is precisely defined.  The system meets all requirements listed in (a) through (c) above.			
	The law establishes delegation and accountabilities, but the system concentrates decisions at a high level, creating congestions and delays.			
	Delegation is regulated in very general terms, creating a need to clarify accountability for decision making.			
	Delegation is not regulated by law and is left at the discretion of the procuring entity. There is lack of clarity on accountability.			
2	(a) There is no legal provision or formal criterion defining the appropriate level of delegation.  (b) Article 4(4) of the IPPDR stipulates that "all Procurement will be processed by the Procurement Unit of the MoFEP. No Ministry, Department or other Government Agency shall undertake procurement unless it is designated as a Procuring Entity." Also, Schedule A of the IPPDR stipulates that "the authority to sign all GoSS contracts is vested with the MoFEP who will delegate this authority to the respective Under Secretaries	0	All MDAs have established their own procurement operations without being formally designated as Procuring Entities. A list of entities formally authorized to undertake procurement does not exist.  In practice, the roles and responsibilities in undertaking public procurement and managing contracts are in a state of confusion. This is a	

		<p>of the Ministries and Heads of State Governments. The Under Secretaries and Heads of State Governments shall delegate the same authority to the respective Heads of Departments, Units and Counties".</p> <p>(c) According to Article 4(4) of the IPPDR, where a Procuring Entity has been delegated responsibility for procurement, it must comply with all the Rules and Regulations.</p> <p>(a) not met, (b) met, (c) met</p>		source of mismanagement and a violation of standard procurement rules.
	<p><b>Indicator 7:</b></p> <p><b>Functionality of the public procurement market</b></p>			
a) – Effective mechanisms for partnerships between the public and private sector	<p><b>Scoring Criteria</b></p>			
	<p>(a) The government encourages open dialogue with the private sector and has several established and formal mechanisms for open dialogue through associations or other means.</p> <p>(b) The government has programs to help build capacity among private companies, including for small businesses, and training to help new entries into the public procurement marketplace.</p> <p>(c) The government encourages public/private partnerships, and mechanisms are well established in the legal framework to make possible such arrangements.</p>			
	<p>The system meets (a) plus one other condition above.</p>			
	<p>The system only provides for (a) above.</p>			
	<p>There are no obvious mechanisms for dialogue or partnership between the public and private sector.</p>			
2	<p>Formal links have been established between the public sector and private business, as represented by the Chamber of Commerce and Industry.</p> <p>A Business Forum has been established under the Ministry of Commerce and Industry to help bring the private and public sector closer to each other. A dialogue and a mechanism have obviously been established in connection with the preparation of laws of relevance for the private sector.</p> <p>Pilot projects have been initiated in agriculture to support the development of small enterprises, but they are not yet fully implemented and running.</p> <p>Public/private partnerships in the traditional sense – where private enterprises solve public-sector problems – have not been encouraged or implemented.</p>	1	<p>Laws are discussed in a forum with private-sector participation, and hence the dialogue has been established and laws are being negotiated in a common forum, but according to the Chamber of Commerce and Industry and other private sector representatives, the implementation and enforcement of many laws is far from satisfactory.</p>	

Scoring Criteria				
The private sector is competitive, well organized, and able to participate in the competition for public procurement contracts.			3	
There is a reasonably well functioning private sector, but competition for large contracts is concentrated in a relatively small number of firms.			2	
The private sector is relatively weak and/or competition is limited, owing to monopolistic or oligopolistic features in important segments of the market.			1	
The private sector is not well organized, and it lacks capacity and access to information for participation in the public procurement market.			0	
1	A Chamber of Commerce and Industry exists as the only well functioning private sector association.  There are an increasing number of private enterprises consisting of small traders and partly foreign-owned enterprises. There are very few medium-size and large enterprises.	0	The private sector is very new and hence underdeveloped, dominated by small traders from the country itself and from neighbouring countries, but in both cases mainly "wild business" aiming at short-term profits obtainable as a result of increasing activities in the oil industry and the domestic market after the return of refugees and the high urbanization that has been seen over recent years.	
	Lack of management and business experience after the long period of civil war and lack of proper infrastructure are the main reasons for a high price level in the country and for poor competitiveness.		Very few companies have the capacity to participate in the procurement market, partly due to lack of business experience, lack of financing, and illiteracy.	
Scoring Criteria				
There are no major constraints inhibiting private-sector access to the public procurement market.			3	
There are some constraints inhibiting private-sector access to the public procurement market, but competition is sufficient.			2	
There are multiple constraints inhibiting private-sector access to the public procurement market, which often affect competition levels.			1	
There are major constraints that discourage competition, and private-sector firms are generally reluctant to participate in public procurement.			0	
0	It is relatively easy for an enterprise to qualify as supplier to the public sector. A business license and a tax registration are required as well as a number of other minor formalities, but this is not by itself considered a serious barrier. However, the total amount of registration fees that have to be paid to different public authorities and the fees for the required lawyer assistance are high and may	0	There are reportedly very few entirely local suppliers to the public sector. In many cases, foreign companies or companies jointly owned or operated by a foreign and a local partner are awarded the contracts. This may be caused by many factors, such as the	

	<p>be a serious barrier for the establishment of new businesses.</p> <p>Another major constraint inhibiting the private sector's access to the public procurement market is the limited competencies and financial capacities of the small enterprises.</p> <p>In addition, the problems related to the import of goods constitute another important barrier. Transportation time is long and uncertain, and the custom system is not transparent, and it is impossible to know the time it will take to pass the border and the road blocks at which additional fees are charged by different authorized or, presumably, non-authorized tax collectors. This means that it is difficult to know the time needed for the delivery from abroad and it is also impossible to know the total amount of duties and taxes.</p> <p>Illiteracy among a large number of owners of small businesses has also been mentioned as an important barrier.</p> <p>The limited access to financing from banks and the apparent fact that no down payment is given are other serious constraints for many local enterprises.</p> <p>The absence of information to potential suppliers on how to participate in a tender has also been mentioned as a barrier. The very limited trust in the fairness of the procurement process in relation to the actual award, problems with the due payment, and occasionally very short deadlines are additional barriers that have been mentioned by potential suppliers.</p>		<p>lack of business experience – in particular in public procurement – and the underdeveloped financial system combined with the uncertainties related to import and payment delays. One supplier was of the opinion that foreign suppliers are able to pay more for the contract and that this was the reason for the large number of foreign suppliers, but no documentation for this statement has been given.</p> <p>Public servants explained this by the fact that local suppliers are often several times more expensive than the foreign suppliers.</p>
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	<p><b>Indicator 8:</b> <b>Existence of contract administration and dispute resolution provisions</b></p>		
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a) – Procedures are clearly defined for undertaking contract administration responsibilities.	Scoring Criteria	
	<p>(a) Procedures for the acceptance of final products and for the issuance of contract amendments are part of the legal/regulatory framework or are incorporated as standard clauses in contracts.</p> <p>(b) Clauses are generally consistent with internationally accepted practices (see IFI standard contracts for good practice examples).</p> <p>(c) Quality control (QC) procedures for goods are well defined in the model contracts/documents or in the regulations. QC is carried out by competent officers, inspection firms, or specialized testing facilities.</p> <p>(d) Supervision of civil works is carried out by independent engineering firms or by qualified government supervisors and inspectors.</p> <p>(e) Final payments are processed promptly as stipulated in the contract.</p> <p>Contract administration procedures provide for (a) to (e) above.</p>	3

	Contract administration procedures provide for (a) plus three of the remaining requirements.	2
	Contract administration procedures provide for (a) plus two of the remaining requirements.	1
	Contract administration procedures do not meet the requirements of (a) to (e) above.	0
1	<p>(a) Procedures for acceptance of final products are detailed in the GCC, but to the knowledge of the CPAR-mission, they are not generally incorporated in the contracts themselves.</p> <p>(b) The clauses of the GCC are generally consistent with internationally accepted practices.</p> <p>(c) Quality control is defined in the GCC but is not generally carried out by competent officers due to lack of capability.</p> <p>(d) The works contracts generally require inspection to be carried out by independent agents employed by the procuring entity.</p> <p>(e) Final payments are often late due to poor budgetary management.</p>	<p>Although they might be incorporated in contracts, there is little awareness in the line ministries of any defined procedures for undertaking contract administration responsibilities.</p> <p>The contract administration capabilities of the line ministries are weak. No specific training and no specific manual has been made available to the contract managers so far.</p> <p>No established and common procedures for the acceptance of final products are established. Completion reports are not a common practice. Instead, the contract manager or the supervising officer issues a certificate of completion for payment request.</p> <p>Supervision of civil work is carried out by the engineers of the user departments. In some cases it is delegated to engineers for the line ministry of the State Administration. The quality of the control depends to a high extent on individuals rather than on established and shared practices.</p> <p>The lack of contract management capabilities is a source of critical issues and disputes: outdated documents (including the bid security), mismanagement of contract amendments, no reimbursement claim of advance payments to a contractor who failed to deliver, payment delays, and so on.</p>
b) – Contracts		Scoring Criteria

include adequate dispute resolution procedures.	(a) There is an arbitration law in the country.  (b) The law is consistent with generally accepted practices for neutrality of arbitrators, due process, expediency, and enforceability.  (c) The country accepts as a matter of course international arbitration for international competitive bidding.  (d) Provisions for Alternative Dispute Resolution (ADR) are standard in contracts.  (e) ADR provisions conform to the international standard wording (may refer to IFI standard bidding documents for samples of good international practice).  The system meets all the good practice standards (a) to (e) above		3
	The system meets (a) plus three of the remaining good practice standards.	2	
	The system meets (a) plus two of the remaining good practice standards.	1	
	The system does not use ADR as a normal dispute resolution mechanism in public contracts.	0	
	(a) There is no arbitration law in South Sudan. It seems that the MoLACD is still referring to the Arbitration Law of the Republic of Sudan.  (b) See (a) above.  (c) The general conditions contain arbitration clauses, and they allow arbitration under the UNCITRAL rules if the supplier is located outside South Sudan.  1 (d) The general conditions contain arbitration clauses, and the CPAR-mission has seen a number of examples where the respective general conditions have been used.  (e) The wording of the arbitration clause in the general contracts is not in line with normal standards for arbitration, as they do allow the GoSS to appoint the tribunal if the parties themselves cannot agree on the selection of the arbitrators.	0	When asked about the arbitration law of South Sudan, the MoLACD is referring to the Arbitration Law of the Republic of Sudan. Other MDAs are not able to refer to any arbitration Law at all.  Interviewees have never mentioned the use of a mediator to resolve disputes. It does not seem to be a practice at all.  Although interviewees referred to court cases, no precise examples could be collected. The way disputes are actually handled is not transparent.  Overall, disputes are handled informally.
c) – Procedures exist to enforce the outcome of the dispute resolution process.	Scoring Criteria		
	(a) The country is a member of the New York Convention on enforcement of international arbitration awards.  (b) The country has procedures to enable the winner in a dispute to seek enforcement of the outcome by going to the courts.  (c) The country has a process to monitor this area of contract administration and to address performance issues.  The procurement system in the country meets the requirements of (a) through (c) above.		3
	The country meets two of the three conditions above.		
	The country meets condition (a).		

	The country does not meet any of the requirements.			0
0	(a) South Sudan is not a member of the New York Convention.  (b) It is not possible to assess whether the Sudanese legislation allows for a winner in a dispute to seek enforcement, as the country does not have a normal legislation on administration of justice. The IPPDR states that decisions from the Procurement Policy Unit are final, which might indicate that they cannot be brought before the courts.  (c) The CPAR Mission has not been able to identify a process to monitor this area of contract administration.	0	See above.  Also, both MDAs and private companies acknowledge that difficulty enforcing arbitration decisions or judgement is a general issue in South Sudan.  There is no central management and monitoring of contracts. Procurement files contain only key documents relating to the procurement process; they do not contain certificates of completion or any other documentation linking payments with performance.	
<b>Pillar IV – Integrity and Transparency of the Public Procurement System</b>				
<b>Indicator 9:</b>  <b>The country has effective control and audit systems</b>				
a) – Legal framework, organization, policy, and procedures for internal and external control and audit of public procurement	Scoring Criteria			
	The system in the country provides for:  (a) Adequate independent control and audit mechanisms and institutions to oversee the procurement function.  (b) Implementation of internal control mechanisms in individual agencies with clearly defined procedures.  (c) Proper balance between timely and efficient decision making and adequate risk mitigation.  (d) Specific periodic risk assessment and controls tailored to risk management.			
	The system in the country meets (a) plus two of the above.			
	The system meets (a) but controls are unduly burdensome and time-consuming hindering efficient decision making.			
	Controls are imprecise or lax and inadequate to the point that there is weak enforcement of the laws and regulations and ample risk for fraud and corruption.			
	0	The legislative framework does not contain provisions on the organization, policy, and procedures for procurement audits. The IPPDR limits itself to mentioning that “Records and documents maintained by Procuring Entities on procurement shall upon request be made available for inspection by authorized officials of the Procurement Policy Unit and the Audit Service”.	0	The CPAR-Mission has not been able to identify any general audits of procurement or specific procurement audits that have been carried out to date.  Currently, there seems to be a huge lack of knowledge on how to conduct procurement

			audits in South Sudan.
b) – Enforcement and follow-up on findings and recommendations of the control	Scoring Criteria		
	Internal or external audits are carried at least annually, and recommendations are responded to or implemented within six months of the submission of the auditors' report.		
	Audits are carried out annually, but response to or implementation of the auditors' recommendations takes up to a year.		
	Audits are performed annually but recommendations are rarely responded to or implemented.		
	Audits are performed erratically and recommendations are not normally implemented.		
0	<p>Hardly any internal audit units have been established at the federal level. At the regional level, a few internal units exist, but so far they are not conducting actual audit reports and there is no follow-up or implementation mechanism installed.</p> <p>The Auditor General's Office has been established since 2005, but it has only recently become operational. It has now started to undertake audits of central institutions, but with a back-log from 2007, and no actual audit reports have been published yet. An external audit process including recommendations is still to be completed.</p> <p>The PPU control is supposed to check, for example, whether tender documents comply with the regulation. However, there are examples of tenders published without having been sent for quality assurance with the PPU. The Ministry of Legal Affairs should certify all contracts both at the federal and the state level, but apart from formal checks neither the Ministry of Legal Affairs nor the PPU conduct internal audits of procuring entities.</p>	N/A	N/A (compliance covered by corresponding BLI)
c) – The internal control system provides timely information on compliance to enable management action.	Scoring Criteria		
	(a) There are written standards for the internal control unit to convey issues to management depending on the urgency of the matter.		
	(b) There is established regular periodic reporting to management throughout the year.		
	(c) The established periodicity and written standards are complied with.		
	All requirements (a) through (c) listed above are met.		
	Requirement (a) plus one of the above are met.		
	Only requirement (a) is met.		

	There is no functioning internal control system			0
	0	There is no functioning or operational internal control system in the procuring entities.  As mentioned under 9(b), internal control units have rarely been established at the federal level and only formally at the state level. It is not clear what these units are supposed to do in practice, and there is no written standard for this function. So far, the few units that have been established (at the state level) are not undertaking formal reporting to the management.  (a) Not met, (b) not met, (c) not met	0	As practically no internal control units are operational and as there are no written standards or formal reporting procedures implemented for their operation, the level of performance of these units is at a very low level.
d) – The internal control systems are sufficiently defined to allow performance audits to be conducted.	Scoring Criteria			
	There are internal control procedures, including a manual that states the requirements for this activity, which is widely available to all staff.			
	There are internal control procedures, but there are omissions or practices that need some improvement.			
	There are procedures, but adherence to them is uneven.			
	The internal control system is poorly defined or non-existent.			
	0	In some procuring entities internal control units have been or are about to be established, but so far there is no sign of any established formal procedures and there is no existing internal control manual.	0	As very few internal control units exist and as a corresponding internal control framework is missing, it is evident that even though a few internal control mechanisms do exist they are still not functioning effectively.
e) – Auditors are sufficiently informed about procurement requirements.	Scoring Criteria			
	There is an established program to train internal and external auditors to ensure that they are well versed in procurement principles, operations, laws, and regulations, and the selection of auditors requires that they have adequate knowledge of the subject as a condition for carrying out procurement audits.			
	If auditors lack procurement knowledge, they are routinely supported by procurement specialists or consultants.			
	There is a requirement that the auditors have general knowledge of procurement principles, operations, laws, and regulations, but they are not supported generally by specialists in procurement.			
	There is no requirement for the auditors to have knowledge of procurement, there is no formal training program, and no technical support is provided to the auditors.			
	0	The auditor profession is quite new in South Sudan and the requirements for the newly recruited auditors, e.g. in the Auditor General's Office, have been modest in terms	N/A	N/A (compliance covered by corresponding BLI)

	<p>of procurement knowledge.</p> <p>Internal auditors are still not operational and they are not required to have specific procurement skills.</p> <p>There are training programs available for procurement officers (see indicator 5(c)) but there are no established formal training programs for auditors encompassing procurement elements. In terms of technical support, auditors have so far had to rely primarily on external international experts and to some extent on the PPU.</p>				
	<p><b>Indicator 10:</b></p> <p><b>Efficiency of appeals mechanism</b></p>				
<p>a) – Decisions are deliberated on the basis of available information, and the final decision can be reviewed and ruled upon by a body (or authority) with enforcement capacity under the law.</p>		<b>Scoring Criteria</b>			
		<p>(a) Decisions are rendered on the basis of available evidence submitted by the parties to a specified body that has the authority to issue a final decision that is binding unless referred to an appeals body.</p> <p>(b) An appeals body exists that has the authority to review decisions of the specified complaints body and issue final enforceable decisions.</p> <p>(c) There are times specified for the submission and review of complaints and issuing of decisions that do not unduly delay the procurement process.</p> <p>The country has a system that meets the requirements of (a) through (c) above.</p>			
		<p>The country has a system that meets (a) and (b) above, but the process is not controlled with regard to (c).</p>		2	
		<p>The system only provides for (a) above, with any appeals having to go through the judicial system requiring a lengthy process.</p>		1	
		<p>The system does not meet the conditions of (a) through (c) above, leaving only the courts.</p>		0	
1	<p>(a) According to article 57 (3) of the IPPDR, decisions made by the first tier for complaints handling (the Head of the Procuring Entity) should include the reasons for the decision and indicate the corrective measures that are to be taken.</p> <p>(b) The PPU is the mandated appeals body with the authority to review the complaint and reverse the decision made by the procuring entity. Its decision is final. However, under Regulation 27 the Procuring Entity can reject tenders, which is not subject to review.</p> <p>(c) There is a specified timeline for when both the procuring entity and the PPU should issue a final decision, which is within 30 days.</p> <p>(a) met, (b) not met, (c) met</p>		0	<p>In principle, very few complaints are being placed even at the first tier of complaint. Also, it is not very transparent how complaints are actually handled, since decisions are not made public.</p> <p>Finally, a timeline of 30 days for handling complaints is considered to be quite lengthy and constitutes a risk in terms of delaying the procurement process.</p>	

b) – Capacity of the complaint review system and enforcement of decisions.	Scoring Criteria				
	The complaint review system has precise and reasonable conditions and timeframes for decisions by the complaint review system and clear enforcement authority and mechanisms.				3
	There are terms and timeframes established for resolution of complaints but mechanisms and authority for enforcement are unclear or cumbersome.				2
	Terms and timeframes for resolution of complaints or enforcement mechanisms and responsibilities are vague.				1
	There are no stipulated terms and timeframes for resolution of complaints, and responsibility for enforcement is not clear.				0
c) – Fairness of the complaints system	Scoring Criteria				
	Procedures governing the decision making process of the review body provide that decisions:				
	(a) are based on information relevant to the case;				
	(b) are balanced and unbiased in consideration of the relevant information;				3
	(c) can be subject to higher level review; and				
	(d) result in remedies that are relevant to correcting the implementation of the process or procedures.				
	Procedures comply with (a) plus two of the remaining conditions above.				2
	Procedures comply only with (a) above.				1
	The system does not comply with any of the above				0
	N/A	As the complaints system is not, in effect, operational, and as the CPAR team did not have access to material concerning complaints decisions, it has not been possible to assess the fairness of the system.	N/A	As above.	
d) – Public access to decisions	Scoring Criteria				
	All decisions are publicly posted on a government web site or in another easily accessible place.				3
	All decisions are posted in a somewhat restricted-access media (e.g., the official				2

	gazette of limited circulation).		
	Publication is not mandatory and publication is left to the discretion of the review bodies, making access difficult.		
	Decisions are not published and access is restricted.		
0	The Interim regulation has no mention of a requirement to publish decisions made by any appeals authority and there is no central source of information where this type of information could be made available.	0	No decisions made or statistics concerning complaints handled by the PPU are publicly accessible.
(e) – Independence of the administrative review body	<b>Scoring Criteria</b>		
	The complaint review body is independent and autonomous with regard to resolving complaints.		
	N/A		
	N/A		
	The complaint review body is not independent and autonomous with regard to resolving complaints.		
0	The complaints review function vested with the PPU cannot be considered as independent or detached from either the Ministry of Finance and Economic Planning or the Ministry of Legal Affairs, which has a substantial role in terms of approving contracts. An actual independent Complaints Board has not been established neither at the federal nor the state level.	N/A	The CPAR team did not have access to material concerning complaints decisions, and it has not been possible to assess the actual independence of the complaint review body.
<b>Indicator 11:</b> <b>Degree of access to information</b>			
Publication and distribution of information	<b>Scoring Criteria</b>		
	Information on procurement is easily accessible in media of wide circulation and availability. The information provided is centralized at a common place. Information is relevant and complete. Information is helpful to interested parties to understand the procurement processes and requirements and to monitor outcomes, results and performance.		
	Information is posted through media that are not readily and widely accessible or not user friendly to the public at large OR information is difficult to understand to the average user OR essential information is lacking.		
	Information is difficult to get and very limited in content and availability.		
	There is no public information system as such, and it is generally up the procuring entity to publish information.		
0	There is no requirement to publish procurement information in widely distributed media. In practice, procurement notices can	N/A	N/A (compliance covered by corresponding BLI)

	<p>be found in local newspapers, but there is no systematic approach to publishing and distributing procurement information. There is no centralized source of information (e.g., website).</p> <p>Further, it was noted that international competitive tenders are only posted in local newspapers.</p>		
	<b>Indicator 12:</b> <b>The country has ethics and anticorruption measures in place</b>		
<b>a) - Legal provisions on corruption, fraud, conflict of interest, and unethical behavior</b>		<b>Scoring Criteria</b>	
		The procurement law or the regulations specify this mandatory requirement and give precise instructions on how to incorporate the matter in tender documents. Tender documents include adequate provisions on fraud and corruption.	
		The procurement law or the regulations specify this mandatory requirement but leave no precise instruction on how to incorporate the matter in tender documents, leaving this up to the procuring agencies. Tender documents generally cover this but without consistency.	
		The legal/regulatory framework does not establish a clear requirement to include language in documents but makes fraud and corruption punishable acts under the law. Few tender documents include appropriate language dealing with fraud and corruption.	
		The legal framework does not directly address fraud, corruption, or unethical behaviour and its consequences. Tender documents generally do not cover the matter.	
0		<p>The subjects of fraud, corruption or unethical behavior and their consequences are only addressed in the IPPDR in the context of the establishment of the Policy Procurement Unit. Article 5(4) states as such: "The Government of Southern Sudan (GoSS) shall establish a Policy Procurement Unit within the Ministry of finance &amp; Economic Planning, under this Regulation. The Unit shall enhance soundness of public procurement management by establishing standards, monitoring of public procurement processes, and advising the Government on appropriate actions to be taken in cases of non-compliance, fraud and corruption and how to deal with complaints."</p> <p>The legal and regulatory framework does not establish a clear requirement to include language in documents, but various types of fraud are punishable under the South Sudanese penal code. Corruption is not sanctioned as an individual crime but is punishable under various other articles of the penal code.</p> <p>A few tender documents include a warranty</p>	<p>N/A</p> <p>See sub-indicator 12(c) concerning enforcement.</p>

	<p>of the supplier that no officials of the procuring entity have directly or indirectly benefited from the contract and that a breach of the clause is considered a breach of an essential contract term.</p> <p>The GCC contains a more solid definition of corruption.</p>		
<b>b) – Definition in legal system of responsibilities, accountabilities, and penalties for fraudulent or corrupt practices</b>	<b>Scoring Criteria</b>		
	<p>The legal/regulatory framework explicitly deals with the matter. It defines fraud and corruption in procurement and spells out the individual responsibilities and consequences for government employees and private firms or individuals found guilty of fraud or corruption in procurement, without prejudice of other provisions in the criminal law.</p>	3	
	<p>The legal/regulatory framework includes reference to other laws that specifically deal with the matter (e.g., anti-corruption legislation in general). The same treatment is given to the consequences.</p>	2	
	<p>The legal/regulatory framework has general anti-corruption and fraud provisions but does not detail the individual responsibilities and consequences, which are left to the general relevant legislation of the country.</p>	1	
	<p>The legal/regulatory framework does not deal with the matter.</p>	0	
	<p>0</p> <p>The subjects of fraud, corruption, or unethical behavior and their consequences are only addressed in the IPPDR in the context of the establishment of the Policy Procurement Unit (see indicator 12(a) above).</p>		
	<p>The IPPDR does not contain a reference to other laws that deal with anti-corruption.</p>		
<b>c) – Enforcement of rulings and penalties</b>	<b>Scoring Criteria</b>		
	<p>There is ample evidence that the laws on corrupt practices are being enforced in the country by the application of stated penalties.</p>	3	
	<p>There is evidence available on a few cases where laws on corrupt practices have been enforced.</p>	2	
	<p>Laws exist, but evidence of enforcement is weak.</p>	1	
	<p>There is no evidence of enforcement.</p>	0	
	<p>0</p> <p>There is the Southern Sudan Anti-Corruption Commission Act from 2009, but there is no Anti-Corruption Law, and the mandate of the Commission is clearly restricted. The Commission has the mandate to investigate but not to make any arrests or to prosecute, which they hand over to the Ministry of Legal Affairs.</p>	N/A	
	<p>Last year the Commission referred a handful of cases to the Ministry but has not received</p>		

		feedback in terms of the status of these cases. Consequently, there are no statistics available or any other evidence available of enforcement of rulings or penalties.		
d) – Measures exist to prevent and detect fraud and corruption in public procurement.	Scoring Criteria			
	The government has in place a comprehensive anticorruption program to prevent, detect, and penalize corruption in government, which involves the appropriate agencies of government with a level of responsibility and capacity to enable its responsibilities to be carried out. Special measures are in place for the detection and prevention of corruption associated with procurement.		3	
	The government has in place an anticorruption program, but it requires better coordination or authority at a higher level to be effective. No special measures exist for public procurement.			2
	The government has isolated anticorruption activities not properly coordinated to be an effective integrated program.		1	
	The government does not have an anticorruption program.			0
1	The Southern Sudan Anti-Corruption Commission (SSACC) was established in 2006 but did not become operational until 2009. As mentioned under 12 (c), the mandate of the Commission is restricted to involving investigation and awareness raising only, and coordination with the Ministry of Legal Affairs is not effective at this stage. Also, there are no special measures in terms of public procurement.	0	Potentially, the establishment of the SSACC sends out a strong signal to the Southern Sudanese community. But so far its efforts have had a very limited impact and its activities are not streamlined with other institutions.  The SSACC also starting setting up its structures in 2009, so consequently its measures are still immature and there is a need to strengthen its capacity. Investigated cases are based on requests; there is no systematic approach to selecting cases.  The operations at the state level are yet to be implemented.	
	1 The SSACC has formulated an Anti-Corruption Strategy (2010-2014) in order to reach its objectives. One of the key objectives is to establish anti-corruption partnerships through different forums, but this is still work in progress.  State offices have been established, but there is a real issue in terms of facilities and capacity.			
e) – Stakeholders support the creation of a procurement market known for its integrity and ethical behaviours.	Scoring Criteria			
	(a) There are strong and credible civil society organizations that exercise social audit and control.  (b) Organizations have government guarantees to function and government cooperation for their operation, and they are generally promoted and respected by the public.  (c) There is evidence that civil society contributes to shaping and improving the integrity of public procurement.	3		
	There are several civil society organizations working on the matter and the dialogue with the government is frequent, but it has limited impact on improving the system.		2	

	There are only a few organizations involved in the matter, the dialogue with the government is difficult, and the contributions from the public to promote improvements are taken in an insignificant way.		1
	There is no evidence of public involvement in the system OR the government does not want to engage the public organizations in the matter.		0
2	The civil society in South Sudan is relatively vibrant compared to some of its neighbours and other post-conflict countries.  The civil society umbrella organization is responsible for coordinating the activities for approximately 30 different smaller civil society organizations with various objectives. So far, these organizations have been very focused on nation building activities and on uniting with the government, and it remains to be seen whether these organizations will in fact be able to function as effective watchdog institutions targeting issues relevant to a sound public procurement system.	N/A	N/A (compliance covered by corresponding BLI)
Scoring Criteria			
There is a secure, accessible, and confidential system for the public reporting of cases of fraud, unethical behavior, and corruption.			3
There is a mechanism in place, but the accessibility and reliability of the system undermine and limit its use by the public.			2
There is a mechanism in place, but security or confidentiality cannot be guaranteed.			1
There is no secure mechanism for reporting fraud, unethical behavior, and corruption cases.			0
1	The SSACC established a hotline for reporting suspected cases of corruption in 2010; alternatively, whistleblowers can go directly to the Ministry of Legal Affairs. However, their security cannot be guaranteed and there is no law protecting the informers. Consequently, the reporting mechanism is not clearly defined and does not hold a strong brand.	0	The information received through the reporting mechanism is scanty, and there is a general fear among the population regarding potential consequences for reporting cases. SSACC's facilities are somewhat remote, but still the level of security is modest and can be perceived as a risk to be seen at SSACC's premises.

Scoring Criteria			
g) - Codes of Conduct/Codes of Ethics for participants and provision for disclosure for those in decision-making positions.	(a) There is a code of conduct or ethics for government officials, particularly for those involved in public financial management, including procurement.  (b) The code defines accountabilities for decision making and subjects decision makers to specific financial disclosure requirements.  (c) The code is of obligatory compliance, and the consequences of noncompliance are administrative or criminal.	3	
	The system meets requirements (a) and (b) but is only a recommended good practice code with no consequences for violations unless covered by criminal codes.	2	
	There is a code of conduct, but determination of accountabilities is unclear.	1	
	There is no code of conduct.	0	
1	The Ministry of Public Service has developed a Code of Conduct for public servants, and an ethics and integrity officer has been appointed in some units. However, the mandate of the Code is unclear and the team was not able to retrieve a copy of the Code.	0	Very few stakeholders had heard of a Code of Conduct for public officials and we were not able to retrieve a copy in the offices visited.

