

# PARTICIPATION AND SUSTAINABILITY IN COMMUNITY-BASED PROCUREMENT BETWEEN LAW, PRACTICE AND STORYTELLING: "THE SECRETS OF NIGHT" EXAMPLE FROM WEST AFRICA

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## ABSTRACT

This article explores different participatory tools as set out by national public procurement laws or in specific procurement contractual arrangements, with a specific emphasis on the model of community-based procurement. If citizens' role is often confined to specific sectors or certain procurement phases, the model of community-based procurement seems to embrace a more holistic approach by engaging communities at various stages of the public procurement cycle. With its local nature and its sustainable dimension, community-based procurement has the potential to encourage local ownership while contributing to both the quality and the sustainability of procurement results. However, the decision to use a community-based approach must be subject to technical feasibility studies, stakeholder capacity assessment and risk assessment analysis to determine this model's appropriateness to a given procurement context, and the risks that this approach could entail. Community-based procurement may be used to implement various types of projects, including for small-scale water infrastructure in rural areas and in fragile contexts. In Africa, women have a huge role to play in the water sector, as they predominantly take care of collecting, managing and storing water, having to walk even 4-5 hours a day before reaching a water point. Thus, water point proximity appears to have a significant impact both on rural women's everyday life and, potentially, on public authorities' decisions on where to locate the water infrastructure. Therefore, local communities, particularly women, should be involved along the entire procurement cycle, from the early planning phase onwards. "The secrets of night" narrative from West Africa illustrates that, despite that no one-size-fits-all approach exists, there is a best practice consisting of understanding, weighting, and reconciling the different interests at stake, using the most appropriate lenses (including the *gender* one) and the most effective tools (including *storytelling*).

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# PARTICIPATION AND SUSTAINABILITY IN COMMUNITY-BASED PROCUREMENT BETWEEN LAW, PRACTICE AND STORYTELLING: "THE SECRETS OF NIGHT" EXAMPLE FROM WEST AFRICA

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## 1 Introduction

National public procurement laws pertain to the rules governing the purchasing process of public authorities. Public procurement laws are not just about telling public authorities what they can and cannot do (how to buy and, to some extent, what to buy), but they also provide a framework for how economic operators (also called *bidders* or *tenderers* or *suppliers*) can participate in the procurement process.

Participation is a crucial pillar of the public procurement process and usually applies either to businesses, which must be treated equally and be given the same set of opportunities, or to certain categories thereof, such as small and medium-sized enterprises ("SMEs"), which may be specifically supported by governments. On the one hand, the procurement golden rule is that enhanced competition between bidders and promotion of non-discrimination increase the procuring entities' chances of getting better value for money. The bigger the participation, the lower the prices. On the other hand, certain categories of bidders – such as SMEs – may receive specific support or be given preferential treatment as part of governments' industrial policies aimed at increasing the chances of vulnerable businesses to be awarded contracts that they otherwise would not be able to obtain.

The question is whether participation may also refer to "external stakeholders",<sup>1</sup> such as citizens and civil society organisations ("CSOs"), including local communities, local beneficiaries, and non-governmental

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<sup>1</sup> Organisation for Economic Cooperation and Development (OECD) 2016. *Checklist*.

organisation ("NGOs"). When public entities buy from the private sector, the role of citizens and CSOs is often reduced to that of passive and silent recipients of goods, works and services which they have not had the chance to agree upon. This article argues that involving external stakeholders (hereinafter often referred to simply as citizens or communities) in different stages of the procurement cycle is crucial for the success of the procurement process, as highlighted by the Organisation for Economic Co-operation and Development (OECD),<sup>2</sup> and shown by a certain number (still relatively small, though) of country cases.

The assumption on which this article is based is that citizen participation in the procurement process is a crucial pillar of good governance, and good governance, in turn, is essential to ensure the sound and efficient management of public spending. At the same time, the participatory model may also contribute to reaching sustainability in public procurement across the world and, in particular, in vulnerable areas, while supporting one of the most critical missions of governments, which is to provide goods, services and works in the public interest, in a timely fashion, and with an emphasis on quality, efficiency, value for money and long-term viability to the benefit of societies. As the World Bank ("WB") has emphasized, when public procurement is not effective, "hospitals wait for drugs, teachers for textbooks, and cities for roads".<sup>3</sup>

Despite the importance of the role that citizens play in public procurement, their participation is often confined to either a specific sector or a certain procurement phase, instead of being institutionalized as part of a holistic approach to any type of procurement. An introductory analysis of how citizen participation may be shaped throughout the public procurement cycle, from the design to the implementation phase, is presented in the first part of this article. This conceptual framework is complemented by a selection of examples from across the world, aiming to illustrate the forms and intensities that citizen participation may take depending on several factors, such as the readiness and availability of communities to take action, which may result in a greater or lesser influence on the procurement outcome.

Among this wide array of participatory tools, part two of this article focuses on the model of community-based procurement, exploring the interrelations between its local nature and character and its sustainability face or dimension. The analysis aims to investigate the extent to which community participation in this model has the potential to encourage

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<sup>2</sup> Organisation for Economic Cooperation and Development (OECD) *Public Procurement Toolbox*.

<sup>3</sup> World Bank (WB) 2014.

local ownership of the procurement outcomes while ensuring both the quality and the sustainability of procurement results.

In the third part, community-based procurement is analysed as an instrument for the implementation of small-scale water infrastructure projects, particularly in rural areas and in the context of fragile communities. Besides understanding the specific features of such projects, this part intends to question the way storytelling may or should be used to ensure that communities, with a specific emphasis on local women, are truly and effectively included and engaged in procurement processes involving vulnerable environments. An example from West Africa (which in this article is referred to as "the secrets of night") is used to illustrate how this can be achieved.

Some final remarks are provided on whether community participation in public procurement can be mainstreamed as a general tool to promote both local ownership of the procurement outcomes and sustainable development. To this end, the conclusion of this article attempts to list the main conditions under which community participation in the procurement process is to be recommended and those under which this approach is not likely to be successful.

## **2 CITIZENS AND PUBLIC PROCUREMENT**

### ***2.1 Citizen participation in selected public procurement legal frameworks***

Far removed from the traditional idea of state supremacy, awareness of the role of communities in public decisions and policies has increased over time – even though at a relatively slow pace – blurring the boundaries between ordinary people and the state. As the African Development Bank (AfDB) has highlighted, governments "are sharing with, or even transferring to civil society, many of the responsibilities that they held previously, while political and fiscal decision-making is being transferred to provincial and local levels".<sup>4</sup> When it comes to public procurement, citizens are clearly concerned with the quality and efficiency of services and works provided by governments. Besides their interest in public money being spent properly and wisely, citizens are the end-users and the customers of public services and infrastructure, and thus are exposed firsthand to the impact of any potential bad governance practices of the public sector. For example, when a school is built with unstable concrete or is not earthquake-resistant, students' health and life are at risk. According to a study, in some countries, the death toll from earthquakes is excessive and cannot exclusively be ascribed to a geographic or geological cause, but rather they appear to be more

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<sup>4</sup> African Development Bank 2000:13

related to the lack of ability to afford earthquake-resistant construction and to enforce integrity in public administrations.<sup>5</sup> This happens more frequently in contexts where corruption occurs above average.<sup>6</sup> The study found that corruption kills. First, it kills people when buildings that are constructed below the minimum standards of quality (due, for instance, to bribes and corrupted conduct) collapse. Secondly, corruption kills citizens' trust. The inability of governments to provide basic infrastructure for their citizens results in a lack of trust. This may also lead to communities not being willing to participate in public processes, including public procurement.

In the public procurement process, citizens may contribute to ensure that outcomes are in line with quality and efficiency standards. When not excluded from public procurement systems, citizens can potentially participate along the entire procurement cycle, consisting of, at least, three main stages: (i) planning and procurement design, (ii) award of the contract, and (iii) contract implementation.

The following analysis of country-specific case studies demonstrates that participatory mechanisms may be directly set out in national public procurement laws while others are established as a result of specific contractual obligations (such as integrity pacts, or Canada's Community benefit agreement, for instance). Furthermore, citizen participation may be shaped differently and with different degrees of intensity throughout the public procurement process, depending on whether citizens are allowed to act simply as observers or as key procurement actors.

According to a 2020 report, *Citizen participation and public procurement in Latin America*, participatory tools in public procurement may include a wide array of options, such as integrity pacts; social witnesses; community-based procurement; public oversight committees; platforms for monitoring public expenditure; multi-stakeholder dialogue; public hearings and forums; public consultation; participatory budgets and high intense co-creation approaches.<sup>7</sup> These participatory mechanisms may also be used in combination with each other to reach higher levels of intensity and interaction.

Looking at the upstream phases, citizens may be involved in public consultation early in the procurement process. This is the case of the "public debate" as provided for in the Italian Code on public procurement. First established by article 22 of the Legislative Decree No 50/2016, as modified by Legislative Decree No 57/2017, and then reinforced by the new Legislative Decree No 36/2023, public debate takes place in the

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<sup>5</sup> Ambraseys & Bilham 2011:153-155.

<sup>6</sup> Ambraseys & Bilham 2011:153-155.

<sup>7</sup> Nicandro Cruz-Rubio 2020:7 *et seq.*

initial procurement design phase when the alternatives are still open and the decision whether and how to carry out the works still has to be made. It is mandatory that public debate must be held in case of large-scale infrastructural works of social relevance with an impact on the environment. The two criteria (the special social relevance of the intervention and its impact on the local environment) can also justify the use of public debate beyond these mandatory cases.<sup>8</sup> To this end, a National Commission for Public Debate on Major Infrastructure and Architectural Works of Social Significance is established by Decree No 627 of the Minister of Infrastructure and Transportation of December 30, 2020.

Citizens may also participate in the budget process, as the Brazilian example of Porto Alegre demonstrates. According to this model, citizens are entitled to allocate a proportion of the city's budget to projects of their choice, such as infrastructure or social programs. Citizens are usually involved in three streams of meetings: neighbourhood assemblies, thematic assemblies, and meetings of delegates for citywide coordinating sessions (the Council of the Participatory Budget),<sup>9</sup> with a large representation of "women, ethnic minorities, low income and low education participants". According to some data, this model has contributed to a more effective allocation of resources, including "to the poorest parts of the city where it was most needed".<sup>10</sup>

Moving from the upstream to the downstream phases, civil society may also play an active role in monitoring the procurement process, for example by means of integrity pacts, as first developed by Transparency International in the 1990s. Integrity pacts are defined as "a signed document and approach to public contracting which commits a contracting authority and bidders to comply with best practice and maximum transparency".<sup>11</sup> Those contractual obligations are placed under the oversight of a third party (which is often a CSO or an NGO). It is estimated that, between 2015 and 2021, fifteen CSOs monitored 46 public contracting procedures in the European Union through the mechanism of integrity pacts.<sup>12</sup> Likewise, in Latin America (eg, Argentina, Colombia, Ecuador, Paraguay, Peru), Asia (eg, China, India, Indonesia) and Africa (eg, Rwanda, Zambia)<sup>13</sup> CSOs participated in the early detection of corruption and fraud in several public procurement proceedings.

Similarly, in Mexico, citizens may participate in the oversight of procurement processes as "social witnesses" (*testigos sociales*), which can

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<sup>8</sup> Della Cananea 2019:157-169.

<sup>9</sup> Local Government Association (Case Studies).

<sup>10</sup> Local Government Association (Case Studies).

<sup>11</sup> Transparency International *Integrity Pacts*.

<sup>12</sup> Transparency International *Integrity pacts in the EU*.

<sup>13</sup> Transparency International *Integrity Pacts*.

be described as an "external representative of the citizenry" in charge of monitoring compliance with procurement principles, laws and regulations.<sup>14</sup> The Ministry of Public Administration (*Secretaría de Función Pública* – "SFP") periodically organises an open selection process to appoint citizens willing to take this role, and requires them to participate in procurement processes above certain thresholds as a way to promote public scrutiny and to hold public authorities accountable for any violations.<sup>15</sup> According to a joint study conducted by the OECD and the WB, direct social control throughout the procurement cycle can promote transparency, increase competition, and ultimately generate significant savings.<sup>16</sup>

A citizen engagement system has also been introduced in Bangladesh, complemented by a comprehensive strategic and behavioural change communication programme. To this end, the government has established the Public Private Stakeholders Committee ("PPSC"), consisting of CSOs, NGOs, the bidding community, media, contractors' associations and the public sector, that meets at regular intervals to discuss public procurement issues, including integrity aspects, and reports to the local authority about any quality issue of the contract at stake. Launched as a pilot programme in several districts, the citizen engagement system has been used to monitor the implementation of civil works in 48 districts and according to some initial results, has led to the improvement of construction quality.<sup>17</sup> However, a provision for engaging citizens in public procurement monitoring was not included in the Public Procurement Act 2006 and Public Procurement Rules 2008.<sup>18</sup> Likewise, in India, target beneficiaries are involved in different committees, such as Social Audit Committees, Financial Management Committees, Procurement Committees, Gender Cells, and Land Reform Cells. To this end, target beneficiaries are specifically trained to handle various social issues, receiving an *ad hoc* certification.<sup>19</sup>

Besides training, whistleblower mechanisms may also be set up to ensure that citizens and any person working for the public or private sector have safe avenues to report corruption, unlawful activities and other serious wrongdoing. For example, whistleblower protection laws have been

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<sup>14</sup> Nicandro Cruz-Rubio 2020:7 *et seq.*

<sup>15</sup> Organisation for Economic Cooperation and Development (OECD) 2015.

<sup>16</sup> An OECD-World Bank Institute's study undertaken in 2006 indicates that the participation of social witnesses in procurement processes of the Federal Electricity Commission (*Comisión Federal de Electricidad*) created savings of approximately USD 26 million in 2006 and increased the number of bidders by over 50%. See Organisation for Economic Cooperation and Development (OECD), 2016 *Country case*.

<sup>17</sup> Organisation for Economic Cooperation and Development (Methodology for Assessing Procurement Systems – OECD-MAPS) 2020.

<sup>18</sup> World Bank (WB) 2020 *Assessment*.

<sup>19</sup> World Bank (WB) 2009.

enacted in many countries across the European Union, such as Austria, Belgium, Denmark, France, Hungary, Italy, Luxembourg, Malta, Romania and Slovenia.

In addition to monitoring, communities may also be actively involved in the performance phase of public procurement, acting either as contractors or as workforce. In the second scenario, communities or local workers are recruited to execute contracts awarded to businesses. On the other hand, in the first-mentioned scenario, procurement contracts are awarded to communities themselves. Here, it is very common that a certain procurement opportunity is set aside to communities only, meaning that communities are the only eligible bidders competing with one another in order to get the contract. It is rare that procurement opportunities are open to both communities and businesses, as the two are different in their organisational structure, mission and financial resources, to name just a few. In other instances, the contract may also be awarded directly to a given community without competition. This model is referred to as direct contracting. For example, in the Nepal's Public Procurement Act ("PPA") of 2007, procurement of small-scale infrastructure, of which the value is below certain thresholds, can be awarded directly to and implemented by a Consumer Committee (or User Committee), which is composed by, among others, local beneficiaries with a certain representation of women, *Dalit*, and indigenous or ethnic groups. Experience has shown that this inclusive model has the potential to generate local employment opportunities and keep the beneficiaries involved over time, including in the maintenance phase. On the other hand, this model has raised some criticisms, at least for two main reasons. First, it constitutes a waiver of competition; secondly, it often fails to comply with the minimum quality standards of the procurement outcomes.<sup>20</sup>

Enhancing social, cultural, environmental, and economic opportunities for and with communities is at the heart of sustainable public procurement (SPP),<sup>21</sup> which usually refers to public sector purchasing practices that are environmentally friendly, socially responsible, and economically viable. Even though the role of communities is often reduced to that of passive recipients rather than active players of procurement processes, SPP is concerned with both present and future generations' well-being and health as well as the planet we live on. In Canada, interconnections between citizen participation and social sustainability are emphasised in the so-called Community Benefit Agreements ("CBA"), which is often applied to infrastructure and development projects. A CBA is a legal agreement between the public authority, the business, and the

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<sup>20</sup> The Kathmandu Post 2021; MyRepublica 2021.

<sup>21</sup> On SPP see, among others, UN Environment Programme 2017; Roos 2012; Quinot 2013; Arrowsmith & Kunzlik 2009; Sjøfjell & Wiesbrock 2016.



community, which may take the form of either a binding or an informal agreement, and that defines the benefits that will be generated throughout the life cycle of the project and its related procurements. Those benefits include creating local or targeted employment, developing training and apprenticeship opportunities, promoting access to commercial space, and building maintenance contracts with social enterprises.<sup>22</sup>

Overall, if different examples of participatory tools exist across the world, it is important to emphasise that their adoption depends on multiple context-related and procurement-specific factors. As a common trend, without generalising about the variety of different national experiences, it can be observed that citizen participation usually is not institutionalized or mainstreamed in the entire procurement process, but it is more often confined to a particular procurement phase and rarely considered as a mandatory requirement.

## **2.2 Mapping and identifying the right stakeholder group**

Regardless of the specific participatory mechanism used, external stakeholder participation in public procurement can give rise to a number of issues, such as credibility, representativeness, self-awareness, knowledge, capacity, financial resources, readiness and availability to take action, as well as their interest in and influence over the procurement outcomes.

For example, citizens may lack adequate representation to ensure that their voices are correctly represented, truly heard and considered before the right public institutions. Furthermore, there may be language barriers as well as cultural factors and traditions that can impact on how communities engage with procurement processes. Communities may also be discouraged from participating in the procurement cycle if they perceive a lack of accountability of the public sector. Bad governance and corrupt practices may undermine the community's trust in the fairness of the procurement process and in public institutions. Furthermore, communities may find it difficult to navigate and understand the procurement process itself as well as the legal requirements for their participation. Communities may also find it difficult to access information on the procurement process and on related opportunities.

On the other hand, communities may not feel ready to perform procurement works directly. This may be due to a wide array of reasons, such as lack of specific skills; lack of qualified workers; or unavailability of workers in a given period (for example, during the harvest season, most of a village's labour force may be engaged in harvest work, and thus they

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<sup>22</sup> BuySocial Canada CCC Ltd. 2018.

may be unavailable for other types of work). In addition, communities may lack the financial resources necessary to compete in the procurement process and potentially be awarded the contract. For instance, there may be some costs associated with preparing and submitting offers which are prohibitive for small community organisations (such as, legal fees or bonding requirements), or they may have a limited access to capital or credit. These financial barriers may be even higher for communities in remote or marginalised areas.

From an international standpoint, it is fair to say that accounting procedures and organisational structures of community-based organisations may be "problematic when assessed against the standards of international organizations".<sup>23</sup> In particular, it often happens that community-based procurement is "done in cash, and even on credit, and may lack standardized procedures. This lack of standardized procedures often results in missing stationeries, incomplete proofs of expenditure, and a lacking standard of documentation."<sup>24</sup>

Addressing legal, economic, and social barriers to community participation in public procurement requires a multi-faceted approach, including financial support and training, as well as the creation of inclusive and accessible procurement processes. Moreover, citizens are more likely to participate when their contributions are perceived as clear and meaningful, and their involvement does not represent an excessive burden, either in terms of skills, tools, money, or time.

Hence, mapping and analysing stakeholders is a fundamental exercise that public authorities should conduct at an early stage when planning the procurement initiative. For example, when the need for constructing a rural road is identified, the local public authority should not assume that local communities, who normally are unemployed for most of the year, are available, as during certain times, such as the harvest season, they may be involved in harvest-related activities. Besides availability, it is also crucial to understand if the identified stakeholder group is sufficiently representative and the extent to which it operates transparently, with integrity and with a clear allocation of roles and responsibilities within the group. Furthermore, a special emphasis should be placed on determining each group's interest in and power to influence the outcomes. According to Aubrey Mendelow's power-interest matrix, stakeholders can be divided into four main categories having different levels of impact on public decisions. First, some stakeholder groups have high power in determining the outcome of decisions and are made up of highly interested people, while other groups appear to have both low power and less interested members. In addition, there may be stakeholder groups

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<sup>23</sup> United Nations High Commissioner for Refugees (UNHCR).

<sup>24</sup> United Nations High Commissioner for Refugees (UNHCR).

with either a significant influence on decisions but a low level of interest, or groups with a high level of interest but little power over outcomes.

Given this array of options, the stakeholder engagement strategy cannot be built upon a one-size-fits-all approach, but it is to be determined by a case-by-case analysis of stakeholders where the results will help determine how to better engage with each group. Hence, different types of engagement strategies can be used by public authorities depending on several factors, including the desired procurement outcome and an analysis of the stakeholder group's combination of interest and power.

When the *right* stakeholder group is identified for a given public procurement proceeding, its meaningful and effective participation may generate significant benefits at various stages of the procurement cycle. For example, when it comes to planning, the input of the community may be used to better design the procurement process, with a positive effect on the overall efficiency of the outcomes and the alignment of the latter to local needs and expectations. This may also lead to gaining local consensus. On the other hand, community participation in the oversight of the contract's implementation allows for direct social control which contributes to promoting both accountability of the public sector and a better quality of works, services and goods.

For citizens to be able to perform these tasks, transparency plays a crucial role. In some countries, such as Bangladesh,<sup>25</sup> Paraguay<sup>26</sup> and Honduras,<sup>27</sup> open data platforms have been developed and implemented to allow different types of stakeholders to consult key information on public spending. Similarly, at the international level, the WB, in 2021, launched a prototype of the Procurement Anticorruption and Transparency ("ProACT") platform with the purpose of collecting open data from national e-government procurement ("eGP") systems in 46 countries and open data on WB and Inter-American Development Bank ("IDB") financed contracts for over 100 countries.<sup>28</sup>

Participation is also crucial to realising sustainability, as emphasised by the Brundtland Report (entitled "Our Common Future") published by the World Commission on Environment and Development ("WCED") in 1987, and reaffirmed by, among others, the United Nations ("UN") 2030 Agenda for Sustainable Development. Participatory processes are important

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<sup>25</sup> World Bank 2020 *Assessment*.

<sup>26</sup> *Portal de Datos Abiertos de la Dirección Nacional de Contrataciones Públicas* (Paraguay).

<sup>27</sup> *Portal de Datos Abiertos de la Dirección Nacional de Contrataciones Públicas* (Paraguay).

<sup>28</sup> The platform has been developed by the WB in collaboration with the Government Transparency Institute and the Centre for the Study of Corruption at the University of Sussex. See ProAct online portal.

vehicles for achieving economic, environmental and social objectives. For example, UN Sustainable Development Goal ("UN SDG") 17 encourages and promotes multi-stakeholder initiatives, including public, public-private and civil society partnerships, as a way to contribute to the sustainable development goals. When it comes to public procurement, participation is crucial to realising context-sensitive sustainability priorities aligned with local communities' perceptions and aspirations as well as public authorities' needs. Bottom-up and inclusive approaches help procuring entities to contain local resistance or scepticism, and ultimately promote local ownership of procurement outcomes, which is particularly important for long-term viability. When participation is not reduced to a box-ticking exercise, and when public authorities use participatory approaches as a genuine opportunity to seriously engage with local people, citizens will more likely feel that their voice truly matters, and thus they will tend to participate more actively in upstream and downstream procurement-related activities.

Despite its contribution to efficiency, transparency, accountability and sustainability, the institutionalisation and consolidation of external stakeholder participation in public procurement is still uncommon, and the degree of progress differs widely from country to country. It is also rare that judicial force is given to participatory initiatives and that compliance in their implementation is mandatory.<sup>29</sup> For example, even though it is mandatory to consult communities, depending on the legal framework and/or the specific procurement arrangements, it may not be obligatory for public authorities to implement their inputs. In these cases, even though communities are informed about public decisions, they are not truly enabled to influence the outcomes of these decisions. This may entail the risk of reducing communities' participation to a meaningless box-ticking exercise. Another risk is that of localwashing, which may occur when public authorities claim that they have considered citizens' views and values in their procurement processes by means of participatory tools, which actually were not as participatory as claimed.

Overall, despite progress having been made, it appears that external stakeholder participation is not yet a general requirement of all procurement procedures, but that many procurement systems refer to

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<sup>29</sup> Caranta 2022:

"Concerning specifically environmental NGOs, their standing is already grounded in Article 9(2) of the *Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*. This article provides that the interest of any non-governmental organisation shall be deemed sufficient for having access to a review procedure before a court of law and/or another independent and impartial body established by law."

participatory tools as a mere possibility or confine them to limited procurement stages.

In the next part, the model of community-based procurement is analysed with the objective of exploring the extent to which community participation can be mainstreamed along the procurement cycle.

### **3 ZOOMING IN ON COMMUNITY-BASED PROCUREMENT**

#### **3.1 *Understanding community-based procurement: why, when, where, and how***

Community-based procurement can be defined in different ways depending on the specific domestic legal framework and national experiences. In general terms, community-based procurement consists of a bottom-up and relatively low-value procurement of non-complex services, locally available/manufacturable goods, or small-scale works, when all or some of the procurement-related activities are conducted, partially or wholly, at the community level. This type of procurement is often used to implement local projects in rural areas or in so-called fragile contexts, addressing specific needs of a community, particularly in acceding basic goods, services and facilities, the lack of which would hamper socio-economic and human development. The rationale behind this approach is to listen to the voice of local communities while giving them the opportunity to be actively involved in procurement-related activities that are likely to have an impact on their day-to-day life.

As the selection of the right community (i.e., the one with the highest interest in, knowledgeable about local needs, and both ready and available to take action) appears to be a crucial factor for the success of this mechanism, it is worth figuring out what the term "community" usually refers to. The Oxford dictionary defines a community either as "a group of people living in the same place or having a particular characteristic in common", or as "a feeling of fellowship with others, as a result of sharing common attitudes, interests and goals".<sup>30</sup> According to the 2020 *Guidelines on Community Participation in Public Procurement* developed by Tanzania's Public Procurement Regulatory Authority, the notion of community appears to be a catch-all term covering a wide array of heterogeneous categories, from informal to formal groups, including "individuals or groups of beneficiaries; community groups with no legal status; associations or groups with legal status, with or without separate legal personality as a group; small-scale artisans and other local or small commercial organizations and guilds; and small and local level

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<sup>30</sup> Online Oxford Dictionary.

organizations, particularly Non-Governmental Organizations (NGOs) and Community Based Organizations".<sup>31</sup> NGOs may include local and national entities, as well as international establishments which operate in-country.

Even though community organisations may also refer to informal groups, many examples show that formally established organisations are usually needed to ensure adequate representation before public institutions. Therefore, existing groups are often asked to register officially to be able to participate in public processes, including public procurement. Examples of those organisations are the Village Development Committees in Bangladesh;<sup>32</sup> the Village Councils in Tanzania;<sup>33</sup> and the Indian Gram Sabha Project Execution Committees as mentioned by the Community Procurement Manual for the Uttarakhand Decentralized Watershed Development II Project.<sup>34</sup>

As no two communities are the same, differences also exist within each community, where there may be "rich and poor people, people with high and low status, women and men, old and young people, people from low and high caste, ethnicity, ethnic minorities and majorities, high and poorly educated, powerful and powerless, farmers and cattle raisers, landowners and landless", all of them interacting "in many different ways, some visible, some invisible".<sup>35</sup>

Communities are at the core of the so-called "community-based procurement" model, where they play different roles and often have "executive" functions,<sup>36</sup> from procurement design to the performance phase. In procurement planning, local communities are usually consulted and actively involved in identifying needs, in co-creating the budget and/or in co-drafting technical specifications. When selecting the contractor, a "community competitive bidding" process may be used, meaning that only community-based organisations are eligible to participate in the procurement process and obtain the contract. When contracts are set aside for community-based organisations, competition is therefore restricted to this category alone. In other instances, contracts may be awarded directly to a specific community organisation without competition. This form of direct contracting is often used in emergency situations or when competitive tendering is likely to fail (for example, when, in a remote area, there is only one interested and available community). When communities are awarded the contract either through community competitive bidding or through direct contracting, subcontracting is usually limited or prohibited and communities have the

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<sup>31</sup> Tanzania's Public Procurement Regulatory Authority 2020.

<sup>32</sup> Haneef *et al* 2014

<sup>33</sup> Tanzania's Public Procurement Regulatory Authority 2020:7 *et seq.*

<sup>34</sup> Watershed Management Directorate 2015.

<sup>35</sup> Mwakila 2008.

<sup>36</sup> International Labour Organisation (ILO-Somalia Programme) 2007.

obligation to carry out the work directly, using the community force account, or to produce the goods within that community. In these cases, the scope of work is usually simple, and implementation by the community is the most practical solution. However, some exceptions may exist. For example, if an adequately skilled workforce within the community cannot be found or if there is not enough time to train local workers, public works can be conducted by a third party. This option is not ideal as community-based procurement is intended to empower local beneficiaries and communities, by strengthening their skills and competencies while also providing them with job opportunities – even though short-term ones (i.e., corresponding to the time necessary to execute and complete the works).

When a procuring entity intends to use a community-based approach, it has to make sure that communities are trained prior to the launch of the procurement procedure, in particular when communities lack the necessary skills and competencies. Training activities usually cover a wide array of topics concerning procurement design, management and implementation, including how to keep record of both relevant documents and receipts of payments. Training may also focus on facility maintenance activities, or on specific techniques that must be used in carrying out works, such as in the case of labour-intensive construction. Following the International Labour Organisation ("ILO")'s Employment-Intensive Investment Programme ("EIIP"), communities are often trained in "block making, road, drainage, environmental or other civil works skills",<sup>37</sup> using both traditional learning methods and learning-by-doing approaches.

The ILO-EIIP approach usually combines two methods of conducting works: (i) "Labour-based Technology" (LBT), and (ii) "Local Resource based Technology" (LRBT). The first refers to "the application of a labour/equipment mix that gives priority to labour", in particular, to manual labour, with the possibility of supplementing it with light equipment, when and if necessary.<sup>38</sup> The second focuses more on the use of local communities and locally available materials. Usually, feasibility studies are conducted to assess the potential for success of the ILO-EIIP approach based on whether it is technically possible and economically viable. The ILO-EIIP approach is particularly relevant in rural and vulnerable areas, where physical or institutional infrastructure may lack, or communities may be geographically isolated. Examples of such small-scale infrastructure where the construction thereof may be mainly carried out by local communities include farm-to-market roads and other access roads, footbridges, water supply facilities, irrigation canals and drainage

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<sup>37</sup> International Labour Organisation (ILO-Somalia Programme) 2007.

<sup>38</sup> International Labour Organisation (ILO) *Local Economic Development*.

systems.<sup>39</sup> Community participation at this level has proved to generate new opportunities of employment and skills development.<sup>40</sup>

Interestingly, the ILO-EIIP approach has been institutionalised in Cameroon's public procurement framework. Article 57 of the 2018 Public Procurement Code (Decree No 2018/366) establishes that contract performance clauses should give priority to a labour-intensive approach whenever possible. Decree No 2014/0611/PM also provides a definition of local materials, which reads as follows: "local materials are those raw materials that are locally available, or those products derived from the processing of locally available raw materials and requiring a maximum of 30% imported inputs".<sup>41</sup> The use of "local procurement of materials" is considered, in some cases, as having "many advantages over centralized procurement", such as lower costs and enhanced "communities' knowledge of available materials, their quality and prices and contacts with suppliers".<sup>42</sup> These are some of the main findings that resulted from the *Operationalizing community-led multiple use water services (MUS)* project conducted from 2016 to 2020 in South Africa.

Given its local character (which will be focused on in the next part), community-based procurement cannot be considered as a one-size-fits-all model. Diving into the procurement cycle, it can be observed that community participation can be shaped differently, depending on the specific phase of the procurement under consideration.

In particular, when the focus is on procurement planning and design, the use of a community-based approach may result in: (i) a co-created procurement; or (ii) a consultative procurement. In the first example, communities co-design the procurement with the public authorities, for example, co-identifying needs and/or budget, and/or co-drafting technical specifications. In the second case, communities are consulted mandatorily, but the impact of their views depends on whether public authorities have the obligation to implement them.

Concerning the award phase, community-based procurement may be conducted: (i) as a waiver of competition; or (ii) following the competition paradigm. In the first case, the local authority negotiates with and gives the contract to the targeted community directly. This type of direct contracting is also known as "community contracting"<sup>43</sup> and implies that a given community becomes the contractor without participating in a

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<sup>39</sup> International Labour Organisation (ILO-EIIP) 2020.

<sup>40</sup> International Labour Organisation (ILO-EIIP) 2020.

<sup>41</sup> Article 2 of Cameroon's Public Procurement Decree no. 2014/0611/PM, 24 March 2014 [unofficial translation].

<sup>42</sup> Van Koppen *et al* 2020.

<sup>43</sup> Salomón Álvarez 2015.



competitive procurement process.<sup>44</sup> In this model, the community contractor is usually required to implement the contract directly through the community force account (often adopting the ILO-EIIP approach), and exceptions to this are rare. On the other hand, when a community-based procurement is conducted following the competition paradigm, the procuring entity may restrict competition to community organisations only. For instance, according to article 70 of Cameroon's Public Procurement Code, labour-intensive procurement can be set aside for artisans, SMEs, grassroots community organisations, and CSOs. When the ILO-EIIP approach is adopted, these categories of actors may be required to have successfully completed the training course on the ILO's Local Resource Based Technology ("LRBT") and must submit the "recognized skills certificate" issued by the ILO as an eligibility criterion.<sup>45</sup> Alternatively, the procuring entity may decide not to set aside procurement contracts for community organisations exclusively but instead to open the competition to any type of supplier. This happens rarely, as communities and businesses are different in organisational structure, mission and financial resources.

During the implementation phase, a community-based approach may be used by procuring entities in order to ensure that: (i) works are carried out by community groups only; or (ii) works are partially carried out by community groups; or (iii) works are not carried out but monitored by communities. The latter is the least preferred option in the context of a community-based procurement as it does not help communities improve their skills and capacities through the direct execution of works, while the first model usually applies when the contract is directly awarded to communities (waiver of competition) or set aside for them (limited competition). In these cases, communities usually have the obligation to execute the contract directly. Similarly, when the contractor is not the community but an external bidder, specific contract clauses may establish that works must be conducted, totally or partially, by locally recruited workers. In some instances, communities may also intervene as subcontractors in realising specific tasks. Another option is that the community acts as a monitoring organisation during the contract execution when this is entirely conducted by the external winning bidder. Furthermore, depending on the specific procurement arrangements, the contractor (regardless of whether it is a community-based or a business-based supplier) may also be required to use the ILO-EIIP approach to carry out works.

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<sup>44</sup> UN Capital Development Fund (UNCDF) 2013.

<sup>45</sup> International Labour Organisation (ILO-EIIP) 2019:18, Section A-3, Particular Instructions to Bidders, states:

"The bidding is open for contractors who have successfully completed the Local Resource Based Technology (LRBT) training provided by the ILO".

These forms of participation, as proposed above, are not rigid nor standalone mechanisms, but are variously combined throughout the procurement process depending on local circumstances. The overall objective of community-based procurement is to empower communities in the purchasing process<sup>46</sup> as "a means to participate in initiatives impacting on their own development".<sup>47</sup> In this model, communities usually are not involved in one procurement phase only, but rather throughout the entire procurement cycle. Thus, communities are more than "simple" recipients of procurement outcomes, but they become key players from the early planning phase onwards.

It is to be noted that, in some projects, community organisations may even act as implementing agencies that will undertake procurement, provided that they have adequate skills, internal accountability mechanisms, organisational structure, and institutional capacity to receive and account for funds or administer procurement reliably. According to the African Development Bank, "projects using beneficiary community groups as implementing agents at the field level are based on the conception that local development can happen only if the beneficiaries take direct responsibility for their own development, and the role of government is to provide facilitating support".<sup>48</sup>

### **3.2 *Community-based procurement as a local tool with a sustainability face and character: opportunities and challenges***

Unlike some top-down public procurement strategies, community-based procurement has a strong local dimension. Through bottom-up approaches, this model intends to provide outcomes adapted to local conditions, agreed on with, and delivered by or with the support/oversight of local communities while also using locally available materials to the extent possible. In this model, local communities are involved at different stages of the procurement cycle, which contributes to building and enhancing local ownership of procurement results. In addition, local knowledge and local know-how are used to better shape and implement procurement contracts.

Concerning local ownership, this is an essential factor when it comes to facilitating and maintaining outcomes over time, bringing a sense of responsibility within the community and towards local authorities. In particular, when local communities are engaged in defining needs and possible procurement solutions, they are more likely to act as if they were the owners of these outcomes, taking care of the new or renovated facilities and fostering local authorities' accountability. As observed in

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<sup>46</sup> Nicandro Cruz-Rubio 2020.

<sup>47</sup> International Labour Organisation (ILO-Somalia Programme) 2007.

<sup>48</sup> African Development Bank (AfDB) 2000:13.

Nigeria, ownership may be ensured as long as communities "see themselves as stakeholders who have a stake in the project".<sup>49</sup> In India, the WB reported that "a strong sense of local ownership of the assets resulted in their enhanced sustainability, which could be verified from the near universal usage of the facilities and assets and the continuous involvement of the [local] groups in Operation and Maintenance ("O&M") of the facilities".<sup>50</sup> Instead, if stakeholders do not own the procurement process and outcomes, the risk is that procurement activities may "have limited impact over time".<sup>51</sup>

Furthermore, according to the Asian Development Bank ("ADB"), "local stakeholders have more than labour [...] to contribute to projects" and procurement; they also have experience and skills that can be mobilized.<sup>52</sup> Local knowledge and local know-how are critical to delivering appropriate and context-sensitive outcomes. In fact, local communities are the best placed to share their first-hand knowledge of both local problems and how to deal with them. If communities are not involved in the procurement process, the risk is that "generic solutions which may be inappropriate for the local context are adopted".<sup>53</sup> Another risk is that local knowledge may be considered and promoted marginally, "only for those problems for which normally no solution exist in exogenous knowledge".<sup>54</sup>

The local dimension of community-based procurement is also evident when tender documents require contractors to provide and use, for the performance of the contract, locally acquired or locally rented materials and equipment, "to the fullest extent possible" and "to the extent available, within reasonable cost".<sup>55</sup> Appropriate assessments must be conducted ahead of the design phase to avoid laying down unrealisable performance clauses (for example, when the availability of material depends on the season). The use of local resources and materials aims to dynamise the local economy, by creating business and job opportunities for local enterprises, under-represented local groups, marginalised people, and rural communities. This generates a wide array of socio-economic benefits at the local level. At the same time, using local materials also has the potential to contribute to the reduction of the carbon footprint, energy costs and delivery time.

If community-based procurement has demonstrated to have positive impacts on communities, its local face and character may also generate

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<sup>49</sup> World Bank (WB) 2021.

<sup>50</sup> World Bank (WB) 2009.

<sup>51</sup> Food and Agricultural Organisation of the United Nations (FAO) 2015.

<sup>52</sup> Asian Development Bank (ADB) 2001:20.

<sup>53</sup> Food and Agricultural Organisation of the United Nations (FAO) 2015.

<sup>54</sup> International Fund for Agricultural Development (IFAD) 2004.

<sup>55</sup> World Bank (WB) 2011.

resistance or scepticism at the international level while being a factor of unattractiveness for overseas industries. For example, the latter may have little interest in participating in a community-based procurement that has to be carried out in remote areas using local workers and/or local materials. From an international perspective, local procurement contradicts the international ambition to reduce governments' propensity to buy national. The reference framework for this approach is the Agreement on Government Procurement ("GPA 2012") of the World Trade Organisation ("WTO"). Aiming to open up domestic procurement markets to global competition, the GPA 2012 is a binding international treaty based on the principles of non-discrimination, transparency and procedural fairness, which are reflected in the following main elements of the Agreement's text: (i) national treatment and non-discrimination for covered procurement; (ii) minimum standards regarding national procurement procedures, codifying recognised international best practices in the area of government procurement; (iii) transparency of procurement-related information.<sup>56</sup> Hence, giving preference to local suppliers or buying local goes against the liberalisation *esprit* of the treaty. However, pursuant to Article V of the GPA 2012, special and differential ("S&D") treatment may be negotiated in the accession process by developing countries and least-developed countries in the form of offsets, price preference programmes, initially higher thresholds and phasing-in of entities. The rationale of this provision is to enable developing economies and least-developed countries to limit the application of the GPA 2012 on the basis of their development, financial and trade needs, if so agreed in the accession process by the GPA Parties. Despite still being under-utilised, the S&D treatment could potentially increase the interest of developing economies and least-developed countries when participating in international trade. However, those countries might still encounter some difficulties in joining and implementing the GPA 2012 as their businesses, especially micro, small and medium enterprises ("MSMEs"), may be less competitive in the international arena.

Public authorities might also be less confident about communities' skills and the efficiency of the community-based procurement model. For instance, according to the ADB's *Special evaluation study on participatory development processes in selected Asian Development Bank projects in agriculture, natural resources, and social infrastructure sectors*, government agencies "have a low regard for NGOs as partners in development".<sup>57</sup> At the same time, "NGOs have generally not developed effective mechanism for either consultation or sharing experiences

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<sup>56</sup> World Trade Organisation (WTO) *Agreement on Government Procurement (GPA)*; Anderson & Arrowsmith 2011.

<sup>57</sup> Asian Development Bank (ADB) 2001:iii.

among themselves", which reduces the effectiveness of their engagement in the procurement process.<sup>58</sup>

As a result, the decision to adopt a community-based approach should be subject to technical feasibility studies to determine whether this is the ideal approach for a given procurement in a given context. At the very least, public entities should conduct both a market competition assessment and a stakeholder capacity assessment. The first assessment aims to evaluate potential competitive effects resulting from the use of a community-based approach in a certain area and in a certain sector, while the second aims to analyse stakeholders' skills, eligibility, suitability for the procurement at stake, and their readiness to take action. Furthermore, this allows public entities to identify "the nature and importance of the most plausible risks, opportunities, and assumptions regarding each stakeholder",<sup>59</sup> bearing in mind that, despite similar deficits, no two communities are the same. Their needs may vary considerably depending on the local context and specific interests. Therefore, it is important to initiate the planning phase in advance and deploy immediate efforts to start honest conversation with local authorities and communities to get their collaboration early on. Likewise, criteria for selecting local stakeholders, including local communities, that will be involved in the procurement process, have to be developed and communicated at an early stage and in a clear way.

As already foreshadowed, while community-based procurement has a strong local dimension, it also has a sustainability face and character. Sustainable development can be defined as a "global norm" with a "local face".<sup>60</sup> Forged at the multilateral level in the late 1980s,<sup>61</sup> sustainable development is about being international but with local roots. Such a *g-local* dimension translates the complexity of the concept of sustainable development. On the one hand, international settings constitute the policy-making arena where transnational environmental and socio-economic issues may be globally considered and addressed. On the other hand, challenges may vary from one country to another, and governments may pursue different sustainability priorities. At the interplay of socio-economic and environmental considerations, the sustainable dimension of community-based procurement aims to address, through a local approach, many cross-cutting issues of immediate relevance to the local level (such as employment, workers' rights, nutrition, and sanitation), and with potential global impacts (such

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<sup>58</sup> Asian Development Bank (ADB), 2001:iii *et seq.* It is to be noted that the study found that "NGO capacity assessment in the projects reviewed had been weak in 45 percent of cases".

<sup>59</sup> Asian Development Bank (ADB) 2001:iv.

<sup>60</sup> Zimmermann 2017: 209-222.

<sup>61</sup> World Commission on Environment and Development 1987.

as climate change). As suggested by a 2014 study on Village Development Committees, "sustainability can be defined in a number of ways" depending on "the context; the needs of the community; and the objectives of a particular programme" or project, the implementation of which requires that procurement activities, including those using a community-based approach, are carried out.<sup>62</sup> This approach "recognises the local nature of politics and the social environment within which sustainable development must fit and support".<sup>63</sup> At the same time, the influence of global interests is not to be underestimated. At the international level, certain sustainability challenges may be given priority over others, and certain donor-funded programmes or projects may be shaped accordingly.

Community-based procurement is likely to generate a wide array of sustainability benefits, depending on the context, the local needs and the specific procurement arrangements. For instance, involving local communities in the contract performance may contribute to creating employment and training opportunities. Using local materials may contribute to reducing pollution as there is no need for long-distance transport. Enabling communities to act as societal watchdogs in the monitoring of procurement contracts may help improve good governance and curb corruption and/or waste in public spending. Further benefits listed by the ADB's *Framework for Mainstreaming Participatory Development Process* include "more appropriate intervention, better implementation [...], better utilisation and increased ownership, greater efficiency and better planning, [...] and more importantly increased equity and empowerment through greater involvement of the poor, women, and other disadvantaged groups",<sup>64</sup> such as widows in the *Dingis* community in Nigeria, black-owned businesses in South Africa, and indigenous peoples in Panama, to name just a few.

On the other hand, using a community-based approach may entail several risks which must be assessed carefully, such as "(i) being time and resource intensive; (ii) logistically difficult; (iii) [generating] conflicts among stakeholders; (iv) [having] consultative groups not duly represented; (v) [generating] higher expectations; (vi) [leading to] domination by [a] powerful and more educated elite; and (vii) lack of adequate capacity".<sup>65</sup> Involving many stakeholders may also increase complexity and governance challenges. At the same time, participatory processes may not be as open and inclusive as they were meant to be, for example resulting in the exclusion of some marginalised or vulnerable groups.

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<sup>62</sup> Haneef *et al* 2014.

<sup>63</sup> International Labour Organisation (ILO-Somalia Programme) 2007.

<sup>64</sup> See Annex 9 of Asian Development Bank (ADB) 2001.

<sup>65</sup> See Annex 9 of Asian Development Bank (ADB) 2001.

Given the potential of community-based procurement in empowering local stakeholders, promoting sustainable livelihoods, and improving socio-economic conditions, especially in rural areas and fragile contexts, it is important to keep all these risks sufficiently low or well mitigated,<sup>66</sup> by defining the right balance between viability, sustainability objectives and participation of local communities from procurement planning onwards.<sup>67</sup>

## **4 COMMUNITY-BASED PROCUREMENT OF SMALL-SCALE WATER INFRASTRUCTURE PROJECTS**

### **4.1 *From project to public procurement: community' participation in small-scale water infrastructure***

Data show that in many places, especially the most vulnerable ones, there is no reliable access to water, and that water is neither good (or safe) nor sufficient. According to the UN, at least "1.8 billion people use a source of drinking water that is faecally contaminated, while around 2.4 billion people still lack access to improved sanitation facilities, such as toilets or latrines".<sup>68</sup> In fragile contexts, water is "one of the greatest risks to poverty eradication and sustainable development", which is likely to worsen, if no action is taken, with "growing populations, more water-intensive patterns of growth, increasing rainfall variability, [...] pollution" and climate change.<sup>69</sup>

It is worth mentioning that some community groups are affected more than others. For instance, in Panama, "36 percent of indigenous peoples lack access to water systems compared to 4 percent of non-indigenous peoples, making hand washing and basic hygiene much more difficult to implement".<sup>70</sup> In other cases, even when access to water and sanitation is possible for most of the local population, services and infrastructure may be inadequate or unsustainable.

Therefore, projects on water infrastructure are critical to development, health, well-being, "human dignity and economic growth".<sup>71</sup> At the crossroad of "public health, food security, liveable cities, energy, environmental wellbeing, and climate action",<sup>72</sup> water projects are often interconnected with other sectors, such as agriculture and land use, urban development and energy. Some of the objectives pursued in water projects include energy creation (hydro-electric power), food production

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<sup>66</sup> The Partnering Initiative and UNDESA 2020.

<sup>67</sup> Asian Development Bank (ADB) 2003:20.

<sup>68</sup> United Nations *Sustainable Development Goals (UN SDGs)*.

<sup>69</sup> United Nations *Sustainable Development Goals (UN SDGs)*.

<sup>70</sup> World Bank (WB) 2020.

<sup>71</sup> High Level Panel on Water 2018.

<sup>72</sup> High Level Panel on Water 2018.

(irrigation), drinking water supply (safe water) and sanitation improvement (reliable sanitation).<sup>73</sup> Water projects may also be part of wider programmes. For example, a storm water management programme may cover several projects like constructing new facilities and delivering capacity-building activities. The realisation of any project, including in the water sector, is time-bound, meaning that it is designed to deliver one or more tangible outputs "within a certain timeframe and budget".<sup>74</sup> Nonetheless, its impact should last in the long run to the benefit of both present and future generations.

Against this background, public procurement can be considered as a crucial means of project implementation. When procurement is used within a project, it is usually called "project procurement". Specific guidelines on project procurement are designed by development actors, such as the International Fund for Agricultural Development ("IFAD") and the WB. According to IFAD, project procurement refers to "the undertakings carried out by Borrowers/Recipients [which receive a loan or grant from IFAD] in the procurement of works, goods and services during the execution of IFAD-managed projects and programmes".<sup>75</sup> Similarly, pursuant to the 2018 WB Guide on project procurement in the framework of Investment Project Financing ("IPF"), Borrowers use the funds from IPF grants, loans and credits to procure the required goods, construction (works), or non-consulting and consulting services in order to create "the physical/social infrastructure necessary to reduce poverty and create sustainable development".<sup>76</sup>

Community-based procurement is one of the ways of conducting project procurement. As the IFAD has highlighted in its Handbook, experience from projects in the agriculture and rural development sectors has shown that "it is highly desirable for communities affected by projects to participate in their design and implementation".<sup>77</sup> The nature and extent of their participation have evolved over time "from providing voluntary labour or NGO assistance in initial capacity-building to playing a more direct and active role that can range from determining the nature of subprojects to, more recently, acting as the implementing agency".<sup>78</sup> Participation of communities in project procurement can be understood on the basis of two processes: (i) the *project cycle*, and (ii) the *procurement cycle*.

Looking at the *project cycle*, procurement can be used in different project phases (such as project planning, preparation, implementation and

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<sup>73</sup> Transparency International 2010.

<sup>74</sup> Transparency International 2010.

<sup>75</sup> International Fund for Agricultural Development (IFAD) 2019.

<sup>76</sup> World Bank 2018.

<sup>77</sup> International Fund for Agricultural Development (IFAD) 2021:215.

<sup>78</sup> International Fund for Agricultural Development (IFAD) 2021:215.



supervision) to acquire goods, execute works, and realise services, contributing to the various objectives of the project. For example, during the project planning phase, consultants may be contracted out to conduct feasibility studies while, during the project implementation phase, public procurement may be used to execute works (such as constructing a wastewater treatment plant or a water supply infrastructure) and deliver goods (for example, hydroelectric equipment). Along this project cycle, communities may be given the possibility to participate, outside or inside the procurement scope, in project planning/design (i.e., through public consultation, public hearings and forums, participatory design or co-design approaches), in project execution (such as monitoring activities, public oversight committees, or using the local workforce) and even after closure of the project (for example, by maintaining the newly built infrastructure in the long run, if and when possible). Success stories from Ivory Coast in the 1990s demonstrate that water groups were able to manage the "maintenance of 13,500 waterpoints". This led to a reduction of "breakdown rates from 50 percent to 11 percent at one-third the cost" as compared to the previous expenditure managed by public agencies.<sup>79</sup> Depending on contextual factors, communities may also "initiate project ideas, make decisions about technology type and facility location that best suits their needs".<sup>80</sup> Local knowledge is essential to this end, and communities' insights are important to develop and implement a long-lasting and sustainable project. For example, indigenous communities may share information passed down through generations regarding "how to use water resources to promote their longevity".<sup>81</sup> Or "communities may have beliefs that do not align with the intervention" as initially planned.<sup>82</sup>

In turn, each procurement launched and executed at any phase of the project follows its own cycle, the so-called *procurement cycle*, which is made up of several steps. As already mentioned in part one of this article, these steps include (i) planning and procurement design, (ii) award of the procurement contract, and (iii) contract implementation. Project procurement may raise specific issues, depending on the procurement phase at stake. For instance, in upstream phases, it is important to design the procurement in a way that prevent outcomes that are inappropriate or underestimated. In downstream phases, if the economic operator wins the contract on the basis of a very low-priced tender, there may be a risk of withholding delivery or poor performance by the contractor wishing "to

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<sup>79</sup> Narayan 1995.

<sup>80</sup> Nelson *et al* 2021.

<sup>81</sup> Nelson *et al* 2021, referring to Stefanelli *et al* "Experiences with integrative Indigenous and Western knowledge in water research and management: a systematic realist review of literature from Canada, Australia, New Zealand, and the United States" *Environ Rev*, 2017.

<sup>82</sup> Nelson *et al* 2021.

compensate for low income" after the signature of the contract.<sup>83</sup> This may also cause a cascade effect on other connected project activities that may be delayed or affected by the poor quality of the procurement at stake. When it comes to encouraging participation of local communities, including water user associations, it is important to look at the specific phase of the procurement cycle. For example, although experiences of public authorities co-drafting technical specifications with local communities are rare as this constitutes a highly technical task, in other instances communities' solutions to water-related problems have been "systematized, screened, prioritized and translated into technical designs" and then "costed", as demonstrated by South Africa's project *Operationalizing community-led multiple use water services (MUS)*.<sup>84</sup> Another example is when local communities are the beneficiaries of training/capacity-building activities. In such cases, communities are usually involved in training needs assessment. More frequently, communities are directly involved in either performing the contract, by realising the small-scale works and delivering the locally available goods, or in monitoring the contract performance.

As a result, when legal frameworks permit communities to participate in public procurement of small-scale water infrastructure, the intensity of local participation depends on both the project and the procurement phases at stake. Therefore, from the public sector's perspective, it is important to consider and shape communities' participation throughout both the entire project cycle and each individual procurement cycle.

Apart from the project and procurement cycles, the project's scale is another important factor that may influence how local communities' involvement is shaped. When water infrastructure is realised through large-scale projects, such as large water processing plants, communities are unlikely to get the construction contract given its complexity, but they are more likely to be involved as subcontractors, an individual workforce, or as monitoring organisations. On the other hand, as already mentioned, small-scale water projects may be led or conducted by communities in a more direct or active role. This may be the case of projects focusing on small-scale water supply systems, such as "private or individual facilities typically supplying one or a small number of premises for domestic and/or commercial use, community-managed supplies and publicly managed supplies, typically supplying hamlets, villages, small towns and periurban areas".<sup>85</sup> Small-scale sanitation technologies may also be used in such projects, including pit latrines, flush or pour flush, septic tanks or

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<sup>83</sup> Nelson *et al* 2021.

<sup>84</sup> Van Koppen *et al* 2020.

<sup>85</sup> World Health Organisation (WHO) 2016. These systems "may be piped or non-piped, and may or may not include treatment, storage and distribution".

collective sewerage systems with or without wastewater treatment.<sup>86</sup> Communities and local people are often involved in the realisation of these small-scale works and are put in charge of the onsite systems management. In some cases, community organisations may also act as implementing agencies provided that they have institutional and organisational capacity as well as mechanisms ensuring the accountability of the group leaders.

Even though local communities affected first-hand by water-related projects should always be given the opportunity to be heard and involved regardless of the project scale, it is worth noting that the specific model of community-based procurement better fits small-scale projects, given their non-complex nature and limited scale.

#### **4.2 *Women and public procurement between law and practice: the role of storytelling***

Women play a crucial role within families and communities but are chronically underrepresented in institutions and leadership. According to some data, women hold only one third of seats in local decision-making bodies, 42% of judicial positions, and 16% of police forces.<sup>87</sup> Similarly, few OECD countries achieve gender parity in senior central government positions, which are held by women only for 37% on average.<sup>88</sup> However, equal representation could contribute to reaching more just and peaceful societies, which in turn could better "protect human rights, uphold the rule of law and provide redress to victims of abuse and injustice".<sup>89</sup> Women are also the backbone of economies. Globally, they make up 46% of the public sector workforce. In Africa, they represent 70% of all labour in the agricultural sector, which is the continent's "largest" and "most water-intensive" productive sector, accounting for 30% of the gross domestic product ("GDP").<sup>90</sup> Despite their significant contribution to the economy, it is estimated that, globally, over 380 million women are in extreme poverty, living on less than \$1.90 a day, of which more than 8 in 10 are in sub-Saharan Africa (62.8%) and Central Asia and Southern Asia (21.4%).<sup>91</sup>

Over time, some improvements have been made to ensure gender equality in many countries. First, legal provisions have been enacted to guarantee equal rights and prohibit discrimination against women. A collection of gender equality provisions from 194 constitutions across the

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<sup>86</sup> World Health Organisation (WHO) 2016.

<sup>87</sup> UN Women 2022.

<sup>88</sup> Organisation for Economic Cooperation and Development (OECD) 2021.

<sup>89</sup> UN Women 2022.

<sup>90</sup> International Institute for Sustainable Development (IISD-SDG Knowledge Hub) 2019.

<sup>91</sup> UN Women 2022.

world are listed in the Global Gender Equality Constitutional Database, a cross-border effort involving the International Bar Association's Human Rights Institute ("IBAHRI"), the Swedish International Development Agency ("SIDA"), and the Government of Japan.<sup>92</sup> In some cases, quotas are also established. For example, article 17-1 of Haiti's constitution lays down that "the principle of the quota of at least 30% of women is recognized at all levels of national life, notably in the public services". Besides legal provisions, *ad hoc* institutions have also been established to promote the attainment and mainstreaming of gender equality, such as the Commission for Gender Equality in South Africa, the Consultative Council of Women (*Conseil consultatif de la femme*) in Congo, and the Gender Equity and Equality Commission in Zambia.

When it comes to public procurement, gender-responsive approaches vary from country to country. In addition to increasing the number of women in the purchasing units, committees or other public institutions, public procurement can also be used as a strategic instrument to create employment for people who are far from the labour market. In this sense, employment requirements may serve "to counteract a gender-segregated labour market",<sup>93</sup> by reserving certain job opportunities to women or establishing a share of women workers to be employed by the contractor. Women's participation in the performance stage has proved to generate employment in the short term, and skills development and reinforcement in the long run.<sup>94</sup> At the very least, public procurement should always enforce the legislation in force, prohibiting discriminatory practices based on gender and ensuring equal wages and equal terms of employment between men and women for the same jobs or jobs of equal value.

As a further option, women can also be supported by specific governmental programs aimed at improving women-owned business skills and opportunities to get public contracts or, at a minimum, to intervene as subcontractors. This approach is particularly needed as it seems that women-owned businesses usually obtain very few public contracts, accounting for only 1% of global procurement contracts in 2019-2020.<sup>95</sup>

According to a study commissioned by the Growth and Economic Opportunities for Women ("GrOW"), Kenya is "one of the first African countries to target women and other marginalized groups through its *Access to Government Procurement Opportunities Program*" enacted in 2013. This program requires 30% of procurement opportunities to be set

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<sup>92</sup> UN Women *Database*.

<sup>93</sup> Williams 2020.

<sup>94</sup> International Labour Organisation (ILO-EIIP) 2020.

<sup>95</sup> Williams 2020.

aside for women, the youth and persons with disabilities. Pursuant to the eligibility criterion, women-owned business must be owned by at least 70% of women. Similarly, a women-owned quota has also been established by Uganda and Tanzania, with the latter imposing a 100% requirement of female ownership for a business to qualify.<sup>96</sup> Moving towards West Africa, access to public procurement would need to improve for women-owned and women-led small and medium enterprises, as the use of gender-sensitivity clauses in public procurement still appears to be scarce in this region.<sup>97</sup>

When public procurement is carried out within a water project in rural areas of Africa, it is important to point out that women have a huge role to play. In fact, it is women who predominantly take care of collecting, managing and storing water. Those activities are essential to agricultural production as well as to other activities such as cooking, cleaning, and childrearing. Furthermore, it should be borne in mind that works for small-scale water infrastructure, such as the construction of water points, are often conducted through community-based procurement, meaning that local communities are usually involved along the procurement cycle. Besides being one of the main beneficiaries of water projects, women may also be the potential contractor (if the contract is awarded to a women-owned business), or the labour force carrying out the required works, either totally (when it is provided that all workers must be women) or partially (when only a certain percentage of workers must be women). The role of women is therefore pivotal to designing and implementing procurement outcomes that are in line with local needs and expectations. Hence, women should be included in both decision-making processes and in community organisations where they are still underrepresented, such as committee or water user associations.<sup>98</sup> Even though women's interests and views are often disregarded in practice, decisions adopted by local authority leaders should be formulated only after proper consultation with any relevant stakeholder groups, including women.<sup>99</sup>

Focusing on the decision on where to locate the water infrastructure and what form it must take, African local authorities cannot overlook that it is women who are usually and predominantly in charge of collecting water, and that water sources are often distant, to the point that in many rural areas, women have to walk 4-5 hours a day to fetch water with "low-tech water collection methods".<sup>100</sup> An example from the Sardauna area of Taraba state in Nigeria shows that the location of new street water taps

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<sup>96</sup> International Development Research Centre (IDRC-CRDI). *Where do women stand?*

<sup>97</sup> UN Women 2023.

<sup>98</sup> United Nations 2022.

<sup>99</sup> Mwakila 2008.

<sup>100</sup> United Nations 2022.

was partly left to the women of the community "because they knew best the neighbours with whom they could share and maintain the tap".<sup>101</sup> In this case, a storage facility was created close to the community with a capacity of 2000 gallons of water, which met the needs of local people<sup>102</sup> while also ensuring that women and girls did "no longer have to walk the long distance to the brooks to fetch water".<sup>103</sup>

Thus, water point proximity appears to have a significant impact on women's everyday life in many rural areas of Africa. In fact, while women are responsible for water-related tasks, they cannot seize educational, professional or productive opportunities, bearing in mind that, usually, they are also in charge of family duties.<sup>104</sup>

For procuring entities to make their decision, *time* is a relevant unit of measure to calculate objectively how long it takes for women to reach these water points. Minimising this amount of time may free women for other work or education-related activities. For instance, in Ethiopia, improved access to water enabled women to save time on fetching water and instead to spend more time on collecting milk from dairy animals that they could sell in larger markets by self-organising into collective groups. In Nigeria, girls could even get to school on time.<sup>105</sup>

On the other hand, time is also a social value, the understanding thereof depends on cultural beliefs and local traditions. Between tale and life, it is narrated that, on their way to water points in some rural areas in West Africa, women share each other's everyday joys and trials – the so-called "secrets of night". Time – and this *particular* time – becomes a valuable thing to women: it is when they can interact, exchange and reinforce their bonds. Consequently, reducing the distance to water points may interfere with women's social life as they may have less time to spend together while taking care of their water-fetching activities. Or this may discourage local women from using the closer newly built water points (with the risk that public money is wasted). Local authorities should consider that the more time is saved because of the closer proximity of water sources, the less social interaction is likely to happen – at least during water collection, with a cascade of potential effects on if and how the new infrastructure is used.

Considering local women's preferences requires a specific stakeholder engagement strategy and a participatory needs assessment. Involving women at an early stage contributes to ensuring both the longevity and the ownership of water-related interventions as well as their

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<sup>101</sup> Van Koppen *et al* 2020.

<sup>102</sup> World Bank 2021.

<sup>103</sup> World Bank 2021.

<sup>104</sup> United Nations 2022.

<sup>105</sup> Asian Development Bank 2003.

appropriateness to local needs, thus helping to conciliate local aspirations and sustainability priorities. Hence, in the example above, deciding the location of new water points is not only the result of applying what is stated in the public procurement law and in the tendering documents, but it is also the reflection of how contradicting interests have been balanced and weighted. Far away from the traditional idea of administration supremacy, this approach seems to blur the boundaries between ordinary people and the state. Nowadays, state and society seem not to be exclusively bound by a rigid one-way or top-down relationship, but it increasingly looks like a synergetic integration of different views and interests. Public authorities, including procuring entities, across the world have increasingly developed an ability to listen to beneficiaries' and other stakeholders' voices. For this interaction to be effective, language is key. If lawmakers use "language to make law, and law must provide for the authoritative resolution of disputes over the effects of that use of language",<sup>106</sup> procuring entities must step out of their legalistic and bureaucratic language. Instead, they should use legal narratives through which they can better engage with different types of stakeholders. Acknowledging the role that storytelling may play in law is not something new. Lawyers are used to craft narratives as a means to simplify complex legal notions and arguments with the objective of persuading judges, juries, and other audiences. Looking at public procurement law and practice, the use of storytelling is not only a non-traditional mode of both conveying information to different groups of stakeholders and making it more accessible and memorable, it is also a way of humanising public decisions and reflecting people's values, thus fostering recognition and social acceptance within and beyond parliaments, courtrooms and other decision-making arenas. For example, people's identities, voices, views, and lived experiences may change the way the procurement is initially thought of or designed by the public sector. In turn, procuring entities may lead local beneficiaries to prefer a different (and better) procurement solution, which they were not aware of.

The example referring to "the secrets of night" aims to illustrate the extent to which an old-fashioned way of conducting public procurement, without consulting key stakeholders such as women, can be doomed or is likely to fail. If the new infrastructure does not meet local needs, then it is likely that it will be underused or not used at all. On the other hand, it is important to bear in mind that, in some cases, external stakeholders' views might be influenced by a lack of knowledge of better and more functional options, or by a certain scepticism about the public sector's expertise and competence. Thus, storytelling may be used as a valuable tool to simplify complexity while also valuing local knowledge and

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<sup>106</sup> Zalta & Nodelman (Eds.) 2012.

tradition. In this sense, storytelling may facilitate dialogue between the public sector and citizens, helping them to bring to the table their different inputs with the objective of reaching high quality and efficient public services and infrastructure.

## 5 CONCLUSION

Community-based procurement is an example of a two-way and bottom-up approach which institutionalises community participation throughout the procurement cycle. From planning onwards, local communities are involved in designing and performing public procurement contracts with different levels of interaction.

This model does not represent a quick win. Both public authorities and local communities may encounter difficulties when using this approach. A case-by-case risk assessment is therefore recommended before opting for this model. As this contribution has tried to highlight, the success of adopting a community-based procurement depends on some factors which can be summarised as follows: (i) the scale of the procurement; (ii) motivation, availability, skills, combination of interest and power, representativeness, and readiness of communities; (iii) the effectiveness and the appropriateness of the engagement strategy (including the stakeholder capacity assessment) developed by the procuring entity; (iv) procuring entities' adequate efforts at an early planning stage; (v) the establishment of clear and transparent channels of communication between citizens and procuring entities; (vi) the ability of the procuring entity to both engage with relevant stakeholders along the entire procurement cycle, and use different communication tools, including storytelling. Conversely, a community-based approach is not likely to succeed when (i) there is a lack of motivation or interest from both parties; (ii) there is a mutual lack of trust; (iii) procurement planning is weak; (iv) works are too complex or large to execute by communities; (v) communities have not been trained sufficiently; (vi) there is a lack of adequate channels of communication; (vii) communities' participation is not designed to change or influence public decisions. Furthermore, procuring entities must balance procurement principles of competition, transparency and fairness with the advantages of community participation, while also working out "the incremental costs of involving the community, including training costs, quantifiable risks and benefits, such as increased sustainability of project activities, more effective operation and maintenance of project facilities".<sup>107</sup>

Experience has shown that community-based procurement is particularly recommended in areas where local communities are willing and available

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<sup>107</sup> International Fund for Agricultural Development (IFAD) 2021:215.



to participate in the procurement cycle, including in identifying needs and carrying out the works. In fragile and vulnerable contexts, this model is particularly important as it lies at the root of the society, seeking to empower communities and generate social value. At the same time, contract size is an important factor to be considered. If procurement contracts are expected to be large or complex, community-based procurement may not be viable.

If well structured, community-based procurement can contribute to reaching a wide array of sustainable development goals, provided that the local context is correctly understood, and the right community group (ie, the one with the highest interest, knowledgeable about local needs, and both ready and available to take action) is involved. Furthermore, it is important for procuring entities to ensure that the selected community group is truly engaged throughout the entire procurement process to increase local ownership of procurement results.

Looking at the water sector, using community-based procurement contributes to improving the safety and reliability of both water and sanitation, by making local communities become key actors of public decision-making affecting their day-to-day life. Communities' involvement – especially that of women who are predominantly in charge of collecting water in the African continent – must be shaped early in the procurement cycle, at least at the design phase. This may contribute to formulating locally appropriate, sustainable and gender-inclusive solutions while also leveraging local knowledge and local ownership of procurement outcomes. Through the gender lens, women's involvement along the water infrastructure project cycle contributes to making their voices heard, while their involvement in carrying out the works gives them a source of income with positive socio-economic impacts for the family, and on a rural and local level. This also helps women strengthen their skills and capacities, generating valuable experiences that they can then use in similar situations in the future. On the other hand, the inclusion of women may prevent a widening of inequalities to the degree that these mechanisms are effective and do not jeopardise the viability of the procurement.<sup>108</sup>

"The secrets of night" example illustrates that, despite that no one-size-fits-all approach exists, there is a best practice consisting of understanding, weighting, and conciliating the different interests at stake, using the most appropriate lenses (including the gender one) and the most effective tools (including storytelling). For public authorities, it should not be about a box-ticking exercise, but rather about involving

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<sup>108</sup> Asian Development Bank 2003:20.

local communities in all interventions that are likely to generate impacts on their lives, following the saying: "Nothing about us without us".<sup>109</sup>

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<sup>109</sup> Van Koppen *et al* 2020.

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