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**(OUT)BIDDING WOMEN: PUBLIC  
PROCUREMENT REFORM DIFFUSION AND  
GENDER EQUALITY IN AFRICA**

**S.N. Nyeck**

Clarkson University

[sngonyec@clarkson.edu](mailto:sngonyec@clarkson.edu)

“We will increase transparency and equal participation in the budgeting process, and promote gender responsive budgeting and tracking. We will establish transparent public procurement frameworks as a strategic tool to reinforce sustainable development.”

*2015 Addis Ababa Action Agenda of the Third International Conference on Financing for Development*

“Concerning gender inequality, which is the most important component of social inequality in African states, the international institutions are the most conservative *par excellence*.”

*Tukumbi Lumumba-Kasongo*

“As the site of actions shifts, so equality agendas must be renegotiated.”

*Janet Newman*

**Abstract:**

Are African states bidding for or against gender equality in government outsourcing schemes for the procurement of public works, goods and services? What in the governance of public services provision could be accounted for as continuity of progressive change or setback for gender equality when government outsources its function? Recent scholarship in political science show the status of women has become a global norm and

an indicator of development that speaks to the homogenization of an international society. It is widely recognized that economic arrangements that exclude women's participation are detrimental to the overall economic growth of nation-states. Change in the core functions of the state through outsourcing schemes, however, forces us to query the resilience of gender equality as a key normative variable for policy diffusion within the international society. This essay is concerned with the challenges and opportunities at the intersection of global pressure for policy reform in government outsourcing and national priorities for gender equality. Outsourcing is one way in which governments purchase from the private sector the goods and services they need to fulfill their public mission. Focus here is on the trajectories that gender equality has taken within the context of government outsourcing in Africa. Far from norm emulation, global neoliberal public procurement policy reform has mainly been diffused in Africa through pressure from international institutions and stronger states.

### **Introduction**

Are African states bidding for or against gender equality in government outsourcing schemes for the procurement of public works, goods and services? What in the governance of public services provision could be accounted for as continuity of progressive change or setback for gender equality when government outsources its function? Recent scholarship in political science shows the status of women has become a global norm and an indicator of development that speaks to the homogenization of an international society. It is widely recognized that economic arrangements that exclude women's participation are detrimental to the overall economic growth of nation-states. Scholars have interpreted the spectacular transformation of women-states relations (women's suffrage, sex quota laws, and women's representation in national policy bureaus) as implying the victory of individualization and of the state as the chief mode of political

organization (Towns, 2010). Since 2010, the proportion of seats in a single or lower chamber held by women in national parliaments in Africa, South of the Sahara (all income combined), has been either higher than or equal to global average (World Bank, 2015). As of August 2015, women in national parliaments (both houses combined) represented about 23 percent of World average. Yet, sixteen African states located South of the Sahara make up the top 50 list of countries whose women's representation is higher than 24 percent in national parliaments (IPU, 2015). Not only has universal suffrage been adopted everywhere on the continent, but Liberia, Burundi, Gabon, Malawi, Mauritius, the Central African Republic, and Zambia have joined a small circle of states headed by women albeit with different mandates. Cultural attitudes toward women and structural barriers against their inclusion in public leadership positions are changing thanks to women's organizing and international efforts to bring about gender equality worldwide (Rupp, 1997; True, 2001; Inglehart & Norris, 2003).

Change in the core functions of the state through outsourcing schemes, however, forces us to query the resilience of gender equality as a key normative variable for policy diffusion within the international society. This essay is concerned with the challenges and opportunities at the intersection of global pressure for policy reform in public procurement<sup>1</sup> and national priorities for gender equality. Public procurement is one way in which governments purchase from the profit and nonprofit private sectors, the goods and services they need to fulfill their public mission.<sup>2</sup> How African states have reacted to international pressure to reform public procurement will be made obvious in this contribution. Focus, however, is on the trajectories that gender equality has taken within the context of government outsourcing in

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<sup>1</sup> Terminology differs across countries. Government outsourcing, government commissioning, government purchasing, public procurement, privatization, public-private partnerships are the many names that capture the same phenomenon under study. I use the term government outsourcing and public procurement interchangeably.

Africa. Far from gender norm emulation, global liberal public procurement reform has mainly been diffused in Africa through pressure from international institutions and stronger states. This pattern of policy diffusion, however, works paradoxically with regard to women and gender equality. While it effectively footnotes the gender concerns of women as users of public works, goods, and services, it simultaneously, but selectively hails entrepreneurial categories of gender performance and production by women. This contradictory/complementary citation of women as users and producers of outsourced works, goods and services has the potential to polarize women's interests as well as to open up new spaces for women's economic leadership. This potential for leadership, however, is hard to attain without new mobilization/advocacy strategies by concerned groups and scholarship on the impact of procurement schemes on gender equality. I use the term "Africa" here to capture a regional dynamic. My goal is not to present a comparative study of all the countries, but rather to investigate the gendered dimensions of government outsourcing (or the lack thereof) through an analysis of international demands and recommendations for policy reform resulting into national priorities. I am using the term 'gender equality' to primarily focus on the politics of equal access to public procurement socio-economic opportunities by women. My analysis takes an interpretative path in reviewing global policy diffusion using the World Bank's public procurement country reports (henceforth WBPPCR) that often preceded change in government procurement policy in Africa to examine their sensitivity (or the lack thereof) to gender equality. I also analyze selected national policies such as public procurement laws and regulations to assess the extent to which they converge or diverge from international expectations about gender equality. The Interpretative Policy Analysis Method (Rabinow & Sullivan 1987; Yanow & Schwartz-Shea, 2006, 2012), allows me to query the meaning of policy through a study of its symbolic language, objects, acts and frames of reference. The method is particularly useful to the study of social policy/justice concerns within institutions as it shifts the

frame of reference from “thinking about values as costs and benefits to thinking about them more as a set of meanings” (Yanow, 2000). I am interested in the critical value of gendered meanings embedded in national public procurement regulations and practices in selected countries in Africa.

### **Global Agenda Setting on Trade and Gender Equality: A Twin Birth**

The mid-1990s were important years for global policy agenda setting. In 1994, world leaders gathered in Marrakesh, Morocco, and agreed to create the World Trade Organization (WTO) to set the rules that were to govern the global marketplace. Key to the missions of the WTO was the creation of a viable multilateral trading system based on expanded production and trade in goods and services. The objectives of economic liberalization were promising for the developing countries. More economic exchanges could increase their share in the growth of international trade through mutually beneficial arrangements based on tariffs reduction and the elimination of discriminatory treatment. The thought then and now, was that the opening up of markets could be successful if appropriate institutions were put in place to ensure both transparency, competition, and value for money. Public procurement is one of the platforms the WTO has recognized as needing transparent rules that promote competition between the contracting parties. The plurilateral General Agreement on Government Procurement (1994, henceforth GPA) and the Revised Agreement on Government Procurement (2014) attest to the growing importance of procurement in the public expenditures of the developed and developing countries. The two important features of the GPA are its binding legal character on member states, and its almost exclusive reliance on the economic criterion for evaluating good procurement policies. These features contrast the UNCITRAL Model Law on the Procurement of Goods, Construction and Services (1994 & 2011), which recognize that states might pursue additional national objectives through public procurement. Although no developing/non-Western country was

party to the GPA at its inception, the agreement nevertheless set the agenda for a global movement for market-based liberalization in government outsourcing policies (Arrowsmith, 1998). However, the tension between the level of direct and indirect accommodation of noneconomic criteria in government procurement policies remains contentious.

While global trade liberalization policies were gaining momentum, women were gathering at the Fourth World Conference on Women held in Beijing, China in 1995. Emerging from the conference was the Beijing Declaration that set forth a global platform for advocacy to get governments around the world to commit to an assorted list of gender equity objectives. The idea that the state plays a prime role in policymaking in areas that differentially affect men and women permeated the Beijing Declaration. However, the agenda setters in Beijing broadened the scope of action to ensure that gender equality will still be relevant even as the economic role of the state was changing. Article 36 of the Beijing Declaration specifically recognizes the contingency of success of the agenda as a function of “adequate mobilization of resources at national and international levels as well as new and additional resources to the developing countries from all available funding mechanisms, including multilateral, bilateral and private sources for the advancement of women” (UN Women 2014, p.12). Conceived as crucial to the success of the Platform for Action for gender equality were the “linkages between networks and organizations” in policy implementation within national sub-regional/regional and international institutions. A high note was put on the importance of a consistent flow of gender-sensitive accountability mechanisms at the international level. In this respect, the Bretton Woods institutions and the United Nations were to ensure the implementation of the Beijing Platform of Action by establishing “regular and substantive coordination” of funding and programs for the benefit of women and their families (UN Women 2014, Section 80f, p.47). Financial arrangements at the national levels were to integrate a gender perspective in the budgeting and management of human resources. As prime

implementers of the Beijing Platform, national governments were supposed to encourage non-governmental organizations, the private sector and other actors of civil society to consider allocating resources necessary to the implementation of gender equity. At the international level, the financial arrangements of the World Bank and the IMF with developing countries, particularly Africa, were supposed to integrate a gender approach in their critical analysis of assistance programs (UNWOMEN, 2015).

Nowhere in the Beijing Declaration one finds public procurement as a major concern in gender equality advocacy. Five years after, public procurement appeared as a major preoccupation in the struggle for gender equality worldwide. Beijing+5's strategic objectives linked public procurement to women's core advocacy interests in areas such as health, access to resources and trade.

- C.1. (u) *Actions to be taken by governments in collaboration with non-governmental organizations*: “Rationalize **drug procurement** and ensure reliable, continuous supply of high quality pharmaceutical, contraceptive and other supplies and equipment, using the WHO Model List of Essential Drugs as a guide, and ensure the safety of drugs and devices through national regulatory drug approval processes” (UN Women 2014, p. 66).
- F.2. 166 (h) *Actions to be taken by governments*: “Review, formulate, if necessary, and implement policies, including business, **commercial and contract law and government regulations**, to ensure they do not discriminate against micro, small, and **medium-scale enterprises owned by women in the rural and urban areas**” (UN Women 2014, p. 109).
- F.2. 167(d) *Actions to be taken by governments, central banks and national development banks, and private institutions, as appropriate*: “Ensure that women's priorities are included in public investment programs for **economic infrastructure**, such as water sanitation, electrification and energy conservation, transport and road construction; promote greater involvement of women beneficiaries at the project planning and

implementation stages to **ensure access to jobs and contracts**” (UN Women 2014, p. 110).

- F4. 177 (a) *Actions to be taken by the private sector including transnational and national corporations*: “Adopt policies and establish mechanisms to **grant contracts on non-discriminatory basis**” (UN Women 2014, p. 114).

Concerns about the trajectories and fate of gender equality have since been part of subsequent platforms of action informed by feedbacks from women’s experiences worldwide. Cited in the Beijing+10 report were factors that negatively impacted women’s lives such as change in labor practices that favored casual forms of employment through outsourcing, the commercialization of agriculture and the increasing privatization of resources and services (E/CN.6/2005/2 Chapter 3((107-8), p. 26). Women in Africa, South of the Sahara, were reportedly negatively impacted by the turn to outsourcing and privatization as a development policy E/2010/27 (SUPP) - E/CN.6/2010/11 (SUPP). While Beijing+20 documents reiterate calls to ensure more access to affordable care, they also show that discussions about the role of public-private partnerships for the delivery of optimal or subpar services, especially in healthcare have taken a back stage (E/CN.6/2015/3). This apparent retreat of the debate about gender equality and government outsourcing in the context of Beijing+20 is peculiar given the fact that the UN post-2015 Sustainable Development Goals (SDGs) plan of action rests on private and blended development cooperation (Martin, 2015) based on more devolution schemes in the provision of public goods and services in the developing countries (Ferguson & Harman, 2015).

The point, however, remains that trade liberalization and gender equality advocacy have emerged almost simultaneously as global discourses on policy reform with differing understandings of the function of government and the role of transparent institutions in the delivery of public goods and services. Similarities reside in the recognition that trade can potentially empower the developing and middle income countries to achieve



economic growth. Differences, however, point to substantive questions of empowerment and disempowerment of specific groups in trade agreements and public-private partnerships, the causes of which can be multidimensional. Where trade fails to meet the substantive expectations of gender equality, economic approaches to reform often shift the blame to national institutions and implementing bodies of policies. As Bachelard (2014) reminds us, accounting for international and domestic factors in the governance of public sector reform in Africa helps understand the nature and direction of pressures and counter-pressures that policymakers face in these arenas.

In financing development, new concepts such as “governance” have emerged to capture the dynamics of a multiactor approach to solving collective problems (UN Resolution 69/313 of July 17<sup>th</sup>, 2015). Economic globalization has blurred the traditional distinction between national and international arenas especially in the area of public finance where market-driven solutions and political logics of resources allocation and production clash as well as complement each other. While the state remains the prime aggregator of national policy, “exclusive national policymaking sovereignty has given way to responsive policymaking sovereignty” (Kaul 2006, p. 73), at least in theory. But finding a way to blend and balance external and domestic demands is not easy. In reality, “states are facing an ever-denser international network of external expectations about national public policy, and they are in large measure, complying with them” (Kaul, 2006, p. 74). The model of “responsive policymaking” and its rise as the new paradigm for financing development offers a good framework for understanding how governments in Africa have reacted to the twin pressures from the international community: the pressure to liberalize their procurement systems and the pressure to promote comprehensive gender equality domestically. Knowing where women stand on the economic platform on public procurement reform for development financing in comparison to their leadership roles in national representative

bodies provides us with a new rationale for renegotiating or amending public procurement policy.

### **Why Public Procurement Matters for Gender Equality?**

Public procurement matters for economic reasons. The power of the public purse in public procurement makes it “one of the few levers that government has at its disposal to encourage the private sector to embark upon a developmental agenda” (Watermeyer, 2010, p.1). It is estimated that twenty to thirty percent of the National Domestic Product (GDP) of OECD countries goes to procurement, excluding military spending. We are yet to understand the size of public procurement in the national economies of the developing countries. Leon de Mariz et al., estimate that on average, public procurement spending in sub-Saharan Africa accounts for fifty percent of national expenditures (2014, p.23). These numbers suggest public procurement is one of the most strategic areas where opportunities reside for potential socio-economic transformation today. Thus, the estimated size of procurement opportunities in Africa raises several concerns ranging from potential waste and high level corruption (Coolidge & Rose-Ackerman, 1999; Beuran et al., 2015), to skewed gender priorities in national budgets and international financing for development, to the differential bargaining power between powerful or politically connected firms and African states, and to the future of human and gender security given outsourcing in key sectors such as health (Transparency International, 2006; Greenhill, 2015), education (Mamdani, 2007; Assié-Lumumba, 2007), the environment and security (Avant, 2005). Money lost through procurement is opportunity delayed for gender equality in the financing of development.

The Beijing reports highlight some ways in which public procurement practices differentially impact women as users and producers of services in sub-Saharan Africa. To further illustrate, mercenaries have historically played key roles in toppling down African governments as well as in shaping gender-impactful post-colonial wars in Sierra Leone (Avant, 2005). Recent violence in

Burundi can be attributed in part to contestation over unequal distribution of public procurement rent (International Crisis Group, 2012). Nigeria's recent appeal to white South African mercenaries to rescue the Chibok girls, captives of Boko Haram, was not just stunning, but it further exemplifies the expediency with which women's problems can easily be deflected to non-accountable agents in the context of global outsourcing of war and peace (Dickinson, 2011). Well-known cases of corruption or contract mismanagement reveal not just the weakness of political institutions, but also the imbalance of power between governments and their contractors (Campos & Pradhan, 2007; Anyango Oduor et al., 2014). The Dura grain contract saga in South Sudan (Amos, 2013; Awolich, 2013; Rwakaringi, 2013), the Anglo-Leasing scandal in Kenya (Gathii, 2007), and the rush to seal land leasing contracts in Liberia during the ebola crisis (Watt, 2015) are all examples of how the business of government impacts directly and indirectly communities and women's lives in Africa.

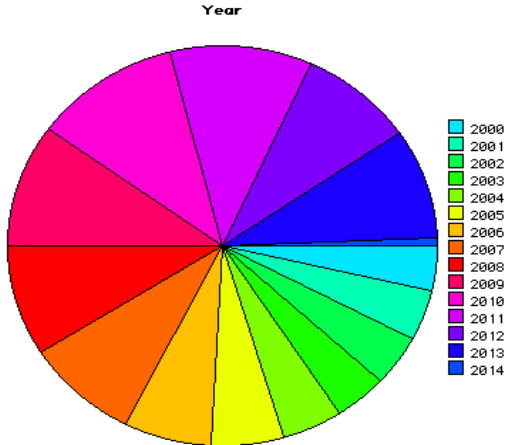
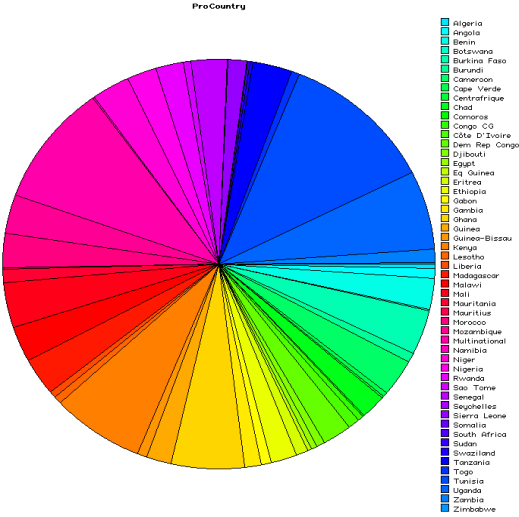
Government outsourcing matters for equity reasons. Far from the idea that transactions are materials and limited to works, goods and services, public procurement differentially empowers interest groups. Applied to public procurement, the neoliberal economic rationale has it that, competition will reward some bidders on public contracts and consumers of public goods and services differentially. The trouble with gender equality within public procurement is not necessarily the importation of the logic of the market to government outsourcing (although some may find it troubling), but the use of its competitive logic to actively resist and reinvent socio-economic agendas. McCrudden's excellent work in the context of the European Community shows that in the mid-1990s attempts to leverage government purchasing power for social purposes such as gender equality were vigorously resisted. "Linkage was seen as an exception, as something that needed to be justified rather than as an accepted part of public procurement policy...The virtual disappearance of linkage in British local authorities by the mid-1990s is one of the clearest, but by no means the only example of the negative effect of procurement

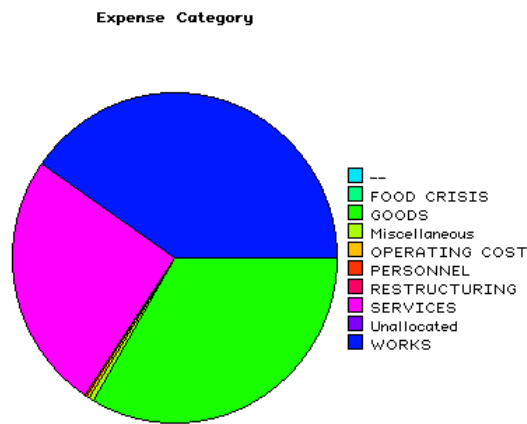
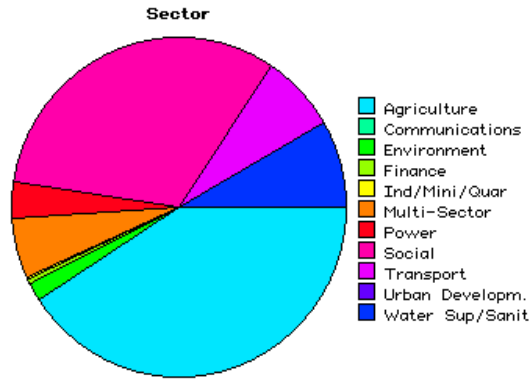
reform on social linkages,” he writes (McCrudden 2007, p. 362; 2004). Thus, around the same time gender equality was gaining momentum as a global platform for action, the market of public procurement was redefining gender equality as needing either an exception or justification. Popular demands for corporate responsibility and increasing importance of environmental concerns have changed attitudes toward socio-economic linkages within the European community (Sarter, 2015). But as the innovative studies of local government in the UK by Conley & Wright (2015) and Conley & Page (2015) show, the conceptual and political shifts that outsourcing represents have the potential to setback gains for gender equality in public services guaranteed by the welfare state. These findings are important beyond their context of advanced economies not just because of global economic trends, but also because of the influence developed countries have on international financial institutions and on policy priorities in the developing countries. Focus on the global macro-economic environment therefore allows one to understand how priorities are set and how reform policies that have a bearing on resource allocation in the developing countries are vertically diffused (Fonn & Ravindran, 2011). Global public procurement discourse for more economic liberalization in the ways governments do business with the private sector is not exempt from hierarchical pressure.

### **African Responses to Global Pressures to Reform Public Procurement**

Public procurement is one of the most hyperactive areas of economic activity in Africa today. Figure 1 below shows the general trend of public procurement activities related to African Development Bank’s (henceforth AfDB) financing from 2000 to 2014 by country, year, sector, and expense category. The aggregate data show an upward trend over the past fourteen years. This trend speaks to the change in the legal environment as most sub-Saharan states have adopted new laws liberalizing public procurement processes (Quinot & Arrowsmith, 2013). The intensification of

public procurement activities is particularly noted in areas that differentially affect women, such as agriculture, transportation, social services and urban development. Based on AfDB's data alone, public procurement trends in Africa directly speak to the concerns of activism and scholarship on land grab and contract farming (Minot 1986; Davis 2006; Haigh, 2014), corruption and contract management in utilities provision (Plummer 2006; WSP, 2015; Kishimoto et al., 2015; Cross, 2015).





**Figure 1:** General public procurement trends by country, volume, sector and by expense category 2000-2014 (all Africa). Author’s calculation based on AfDB’s data. N= 23,000.

The global trend toward public procurement reform that started in mid-1990s has profound effect on national policies. The democratization waves of the 1990s coincided with change in national procurement legislations positioning the drivers for policy change within and outside of Africa. De Mariz et al., (2015) have

stressed the role that international financial institutions such as the WTO and others have played in this process. Public procurement reform, from this institutional perspective is seen as an attempt by lenders to bring order to public expenditures through regional initiatives such as the East African Public Procurement Forum. This focus on economic and institutional reform is mirrored in existing scholarship on government outsourcing in Africa (Quinot & Arrowsmith, 2013; Leon de Mariz et al., 2014) albeit at different levels of governance (Nyeck, 2016). Others have looked at national and regional experiences of public sector transformation (Nkrumah & Mensah, 2014; Akech, 2009; Chanie & Mihiyo, 2013) and social protection (McCord, 2012), but very few have specifically dealt with gender equality in government outsourcing schemes in Africa (Kirton, 2013).

Despite abundant scholarship on gender equality in Africa, the gendered dynamics within public procurement remain understudied. Over the past two decades, civil society organizations have formed around the continent to demand better policy for good governance. Nevertheless, very few have specifically focused on public procurement. To date, Nigeria is the only country in sub-Saharan Africa, with statutory consultative rights for civil society organizations. This apparent neglect of gender equality in public procurement and advocacy for good governance could be attributed to the overwhelming pressure that international financial institutions have placed on the reform process in Africa. By and large, new public procurement regulations have been adopted throughout Africa with minimum input from women's organizations. This is not to say that domestic constituencies were satisfied with national procurement systems prior to the liberal reforms of late 1990s onward. It is rather to highlight the fact that while the democratization waves broadened citizen participation in the political affairs of the state, new public procurement laws were subjected to market and trade logics that footnoted other priorities, especially gender equality. Thus, as African states changed their laws to liberalize public procurement



processes, substantive incorporation of gender equality concerns were either muted or postponed.

### **Outbidding Women: An Epistemic Clash over “Preferences” in Trade and Development**

Global financial institutions played an important role in shaping public procurement reform in Africa and in displacing gender equality concerns. Table 1 below evidences the World Bank’s assessment of selected African countries’ public procurement systems prior to their adoption of new procurement laws. These country reports shaped the trajectories and diffusion of liberalization policy within countries. Data are organized by country and date of the first report, the major target sectors and their subtopics. Data also show the place and function given to women’s or gender issues in the World Bank’s strategic reports.

Country	Document Date	Major Sector	Historic Subtopics	Addressed preferential schemes?	Women Inclusive?
Cameroon (1)	Aug 12, 2005	Public Administration, Law, and Justice	Banks Banking Reform, Public Municipal Finance, Government Procurement, Finance and Development, Public Sector Economics	No	No
Ethiopia (1)	Aug 31, 1998	Public Administration, Law, and Justice	Public Sector Corruption Anticorruption Measures, Corruption Anticorruption Law, Decentralization, National Governance, Pharmaceuticals Pharmacoeconomics	No	No
Ghana (5)	Jun 31, 2003	Public Administration, Law, and Justice	Business Environment, Corruption Anticorruption Law, Business in Development, National Governance, Pharmaceuticals Pharmacoeconomics	Yes- Recommends more specification in law.	No

Madagascar (1)	Oct 17, 1995	Public Administration, Law, and Justice	Legal Institutions of the Market Economy, Judicial System Reform, International Terrorism Counterterrorism, National Governance, Pharmaceuticals Pharmacoconomics	Yes- Recommends clarification on eligibility of joint-venture for preferences (section 3.3.11).	No
Mali (1)	Dec 24, 1998	Public Administration, Law, and Justice	Legal Institutions of the Market Economy, Judicial System Reform, National Governance, Banks Banking Reform, Environmental Economics Policies	Yes - Recommends more specification	No
Mozambique (1)	Jun 1, 2008	Public Administration, Law, and Justice	Contract Law, Public Sector Corruption Anticorruption Measures, Government Procurement, E-Business, Public Sector Expenditure Policy	Yes. "Thus any form of preferential treatment of domestic firms is likely to be welfare reducing" (section 69)	No
Nigeria (2)	Jun 30, 2000	Public Administration, Law, and Justice	Public Sector Corruption Anticorruption Measures, Corruption Anticorruption Law, National Governance, Pharmaceuticals Pharmacoconomics, Business Environment	No	No
Sierra Leone (1)	Dec 20, 1985	Public Administration, Law, and Justice	Legal Institutions of the Market Economy, Environmental Economics Policies, National Governance, Pharmaceuticals Pharmacoconomics, Banks Banking Reform	Yes- Concerns about the use of shopping versus bidding as potentially preferential.	No

Uganda (3)	Jun 15, 2004	Public Administration, Law, and Justice	Public Sector Corruption Anticorruption Measures, Corruption Anticorruption Law, Business in Development, National Governance, Pharmaceuticals Pharmacoconomics	Yes- Vol.1 - Advises against the use of local preferences. "Having this [local preference] provision because it reduces competition, it encourages cartel formation and it never builds capacity" (section 19). "Local preferences should be abolished" (section 23)	No
Zambia (3)	Oct 28, 2002	Public Administration, Law, and Justice; Finance	National Governance, Pharmaceuticals & Pharma economics, Corruption & Anticorruption Law, Public Sector Corruption & Anticorruption Measures, Judicial Reform	Yes- Section 3.20. Recommends the abolition of domestic price preference. "The price preference for (a) imported goods held in stock in Zambia should be abolished as this represents a subsidy with limited lasting impact on domestic capability generation, and (b) goods produced by Zambian SMEs should be reviewed as the desired objectives are better achieved by other	No

				means" (section 3.35)	
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*Table 1: The World Bank's country procurement assessment reports in selected countries; ( ) denotes the number of volumes consulted. The year represents the year of the first report*

The World Bank's Country Procurement Assessment Reports (WBCPARs) were strategic because they outlined the contours of acceptable procurement practices in selected countries. Three important features emerge from Table 1. The first observation is the institutional approach to public procurement reform exclusively enacted by market-based intuitions (law and finance). The second observation is that women and gender equality were not treated as important categories of concern in the framing of the reform and in the identification of target sectors; not even indirectly when discussing preferential schemes involving small and middle size enterprises (SMEs). The final observation is that the World Bank's recommendations generally discouraged recourse to preferential schemes in public procurement. Preferential procurement denotes the measures through which governments seek to empower and protect domestic industry, sectors, or communities from the adverse effects of competition. These measures range from preferences for local labor or goods, quota mechanisms imposed on the prime contractor and/or its subcontractors, regional and sectorial privileges reserved for certain disadvantaged groups and enterprises...etc. National preferences can be built within or outside a contract and they are generally perceived as discriminatory practices against ideal trade competition. Nevertheless, preferential measures are designed to accommodate intersecting concerns about equity and empowerment not just competition and transparency in public procurement schemes. Thus, when linking public procurement to

gender equity, the framing and practice of preferences are important to review.

Data show that besides pointing to technical deficiencies, the WBCPARs were largely antagonistic to preferential schemes in the selected countries. What is interesting in the World Bank's position is that none of the recommendations about how African states should reform domestic preferences was based on hard evidence. To date, there is no major empirical study worldwide that shows either a positive or negative relation between domestic procurement preferences and the growth or fall in national trade. Existing work is nascent and only points to the "potential trade effects" of multilateral rules on procurement on the developing countries (Commonwealth Secretariat, 2011, p. 45). Nevertheless, the conceptual shift that has emerged as a consensus in a context of multilateral trade rules since the creation of the WTO that "the policy space available for granting preference was considerably diminished," (Heron 2013, p.4) found in the World Bank an ideal institutional partner for policy diffusion. The World Bank's recommendations to Zambia particularly shed light on consensus-based approaches to preferential public procurement reforms in Africa.

It is a well-known theorem in the classical theory of international trade that any restriction on free trade reduces welfare. Thus any form of preferential treatment of domestic firms is likely to be welfare reducing. Thus for the same reasons that the traditional approaches to protecting "infant industries" have been discredited, price/purchase preferences should not generally be recommended. However, such interventions continue to be politically popular and are not easily discarded. Accepting this reality, the next best option is to support the government in designing and implementing interventions that minimize the risk of harm and could potentially provide some economic benefits. (2002, p. 69)

Outlined in this recommendation to Zambia is an epistemology of trade that eulogizes competition as the ordering of economic bids in public procurement resulting in optimal outcomes only. While the political utility in public procurement contracts is a constant worldwide, the World Bank's portrayal tends to reduce politics to its negative characteristics only. Short from optimal (real or imagined) economic choices, the World Bank's theory-driven recommendations treated politically-informed or induced preferences as potentially harmful thereby needing justification. Contra to this posture Fonn & Ravindran show that "taking an ideological stand for or against privatization is not helpful" (2011, p.22). In their study of public-private partnerships in the context of Global Health Initiatives (GHIs), they find that theory-driven policy, especially in the pharmacoeconomy, have tended to prioritize single issue vertical programming in spite of evidence that this approach undermines health systems in Africa. While in theory the private sector is said to be more efficient, in practice, most insurance mechanisms only offer limited packages to women, especially those who need social protection the most. Thus "privatization has increased access to some reproductive health services, albeit not comprehensive services, for at least a proportion of the population of some countries" (Fonn & Ravindran 2011, p.22) in Africa over the past thirty years.

In public procurement, preferential schemes have become a fault line of intersecting global and national economic priorities, but also of complex deformations that reorder and transform gendered subjectivities. Categories mobilized under the preferential regime are seen as "protected" or needing justification sustained by considerations outside the contractual economic transactions that tie governments to their suppliers. This global justificatory imperative cautions against the assumption that gains made by women in advancing gender equality when states assume exclusive policymaking sovereignty can be easily transposed to public procurement regimes in the context of economic liberalism. Put differently, global economic discourse has it that subjectivities

must de-form prior to entering into and becoming eligible for competitive global contractual market-based deals. Any subjective residual is left to the states for the management of its risk and potential harm to the economy.

### **De-Forming Gender Equality in Public Procurement**

Public procurement is intriguing not just for intersectionality scholars, but also for anyone engaged in rethinking and designing economic modes of resources allocation that are informed by the complexities of our times (Roland, 2008). Complexities related to the state's ability to effectively function as the sole provider of public services (Roth 1987; Chalfin 2010); complexities related to a growing demand for quality service delivery and social justice coming from diverse communities (McCord, 2012; Chanie & Mihyo, 2013). While outright gender exclusion and gender-neutral language in economic schemes provided scholars with seeds for thought in the past decades; public procurement today widens the possibilities for inquiry and problematizes not just the exclusion of women, but also the premise of their inclusion (Newman, 2010; Mastracci, 2013). In the remainder of the paper, I highlight the ways in which selected African states follow as well as resist the script of global de-formation of subjectivities under the aegis of economic liberal reform to account for the puzzle of differential policy diffusion of gender equality in public procurement. Table 2 below lists a selected group of countries that scored high on women's parliamentary representation in 2015. Next to these high achievers are a small group of states taken from Table 1. Table 2 traces the evolution of national public procurement laws and regulations with respect to preferential schemes and gender equality.

State	New PP Law	Revised / Amended PP Law	Preferential treatment
Rwanda	Public Procurement Law, 2007	Public Procurement Law (no.5/2013)	Article 41 (2007) states: “local preference not exceeding 10% may be granted to companies registered in Rwanda or to Rwandan nationals and bidders in regional economic integration bodies”
Seychelles	Public Procurement Act, 2008	Public Procurement Regulations (2014)	Article 92(1)(2) (2008). Unspecified. Policy is under the preview of the Procurement Oversight Unit in consultation with the government. Article 152 (1)(2)(3)(a)(2014) “eligibility for the margin of preferences in terms of ownership, location of the bidder or production facilities, origin of labor, raw material or components, extent of subcontracting or association with local partners or any other relevant factor”
Senegal	Public Procurement Law, 2007	-	Section 5, reserved for local communities, SMEs, and ECOWAS citizens.
Namibia	Tender Board of Namibia Act, 1996	New Procurement Bill proposed in 2015	Article 15(5); “In comparing tenders, the Board shall give effect to the price preference policy of the Government to redress social, economic and educational imbalances in a democratic society and to encourage industrial and commercial interests in Namibia.” -Proposed New Public Procurement Bill, 2013(84-88). Section 85(3)(a, b) articulate the promotion of empowerment for women following the provisions of the Namibian Constitution.



Ethiopia	The Ethiopian Federal Government Procurement and Property Administration Proclamation, 2009	-	<p>Non-discrimination on the bases of nationality, race or other criterion.</p> <p>Article 4( 2009) “<b>provisions of this Proclamation set out in masculine gender shall also apply in the feminine</b>”</p> <p>Article 25(1)(2), directives on preferential schemes are the preview of the Minister who may specify the margin allowed for nationals, SMEs, an local goods, services or companies.</p> <p>-The Ethiopian Federal Government Procurement Directive, 2010 (4):“No candidate shall be discriminated or excluded from participating in public procurement on the ground of nationality or other reasons which are not related to the evaluation criteria except in accordance with the rule of preference provided in the proclamation.”</p>
Central Afr. Rep	Code des marchés publics, 2008	-	<p>Article 26 preferences reserved in subcontracting schemes for local communities and businesses (15%) and ECCAS enterprises (10%).</p> <p>Article 64.</p>
Gabon	Code des marchés publics, 2002		<p>Article 90 (2012) SMEs, companies/citizen or residents of ECCAS and local communities/businesses are eligible for preferential treatment. 10% for works, 15% preference margin for goods.</p> <p>Article 93 (2012) a foreign company that subcontracts at least 30% of the total value of a contract to local communities may be eligible for a preferential award.</p>
Liberia	Public Procurement and Concessions Act, 2005	Public Procurement and Concessions Act, amended 2010	<p>Article 45 (2005) A margin of preference applies to manufactured goods, material or labor derived from Liberia. Amended as: “the Commissioners shall by regulation set or adjust the minimum benchmarks for the application of the Margin of Preference as it may deem necessary” Article 45(3)(2010).</p> <p>99 (2005, 2010) applicable to concessions.</p>

Malawi	Public Procurement Act, 2003	-	Article 28(1)(2), SMEs promotion; no specific preferential language. "It is the policy of the government to provide maximum opportunities for small medium-sized enterprises to participate as suppliers, contractors, consultants and subcontractors in public procurement" (Article 28(1))
Mauritius	Public Procurement Act, 2006	Public Procurement Regulations 2008-2009  Public Procurement Act, amended 2014	Section 16 (1)(2) (2014) domestic or regional goods are eligible for preferential treatment  *Regulations Article 35 (1)(2) amended as per G.N. no. 86 of 2009)
Zambia	Public Procurement Act, 2008	-	Article 63 (1)(a)(b) margin of preference for target groups (unspecified) offering goods, works or services. Article 63(2) (e) preference or reservation schemes may include " <b>enterprises owned by women</b> " Article 63 (5). Where margin of preference is granted, distinction is made between citizen and local suppliers.
Nigeria*	Public Procurement Act, 2007	NO	"Margin of preferences only applies tender under international competitive bidding" section 34(3). "The Bureau shall by regulation from time to time set the limits and the formulae for the computation of margins of preference and determine the contents of good manufactured locally" section 34(4).  *Regulations 2007 Schedule 2 only recognizes preferences for goods and for domestic contractors without further specification.

Uganda*	Public Procurement and Disposal of Assets Act, 2003	Public Procurement Act, Amended & Regulations, 2014	-PPDA, 2003(50). May apply national preferences or reservation. -PPDA Regulations 2014. Preferences apply to manufactured goods and reservation to particular sector of geographic areas.  *Local Govt. Act (2001): “At least one tender member ought to be a <b>woman/person</b> with disability.”
Kenya*	Public Procurement and Disposal Act, 2005	Amendment debated in 2014	-Section 39 (4): “Preferences and reservations apply to, candidates such as disadvantage groups, micro, small, and medium enterprises.”  *PPDA (Preference and Reservations) Regulations, 2011. Legal Notice No. 58 (2): “A disadvantaged group means...and includes enterprises owned by <b>women</b> , the youth and persons with disabilities.” -PPDA (no. 3 of 2005) Legal Notice no. 114(31)(1) June 18, 2013. “A procuring entity shall allocate at least thirty percent of its procurement spend for the purposes of procuring goods, works and services from micro and small enterprises owned by youth and persons with disability.”
Sierra Leone*	Public Procurement Act, 2004	Regulations 2006	PPA 2004 (36) and Regulations, 2006 (74) on domestic preferences: “The percentage of preference in schemes issued by the NPPA shall be between five and ten percent. The NPPA may review these percentages periodically.”
Cameroon*	Code des marchés publics, 2004		Article 32: national preference 10% for works and 15 % for goods.

*Table 2: Gender preferential schemes in national public procurement laws. (\*) WBPPRC selected states.*

Despite the strategic importance that preferential treatment has in advancing social goals, data show that African states have adopted a minimalist and instrumentalist approach to gender equality in public procurement. This instrumental approach illuminates the ways in which institutions of governance in public service delivery *think* gender and how gender equality depends upon institutional framework (Douglas, 1986). Two important features emerge from a comparative reading of new national public procurement laws and regulations.

First, nowhere do we find the inclusion of women as a normative category in prime national public procurement legislations. This fact shows the limits of crediting the normative role that women's status play in explaining change in women-states relations domestically and internationally. It further suggests the absence of a cohesive national framework for gender equality in public procurement. To illustrate, in Kenya and Zambia, women appear as a "preferential category" without spelling out a *comprehensive* a justification for policy that accounts for both the supply and the demand aspects of gender equality in public procurement.

Second, policy, be it national legislation or subsequent regulation, is yet to simultaneously take into account women as producers as well as receivers of publicly procured works, goods and services. Rather, one sees an attempt to amend trade competition imperative with "old style equality opportunities" (Newman 2010, p.9). In Uganda for instance, the logic of empowerment as political representation of women trumps substantive economic inclusion at the local level. Women's representation in local government tender boards applies without further specification of a gender-specific policy for women as potential suppliers or users of public services. A comprehensive gender equality policy would have to be clarified in national legislations and address the three dimensions of women's political/technical representation in regulatory bodies, in addition to clarifying preferential or reservation schemes that economically

empower women entrepreneurs and consumers of publicly procured goods and services. The neglect of gender equality from the demand and supply sides in public procurement has the potential to polarize advocacy for women's empowerment and inclusive development.

As data show, while the cost of adopting new public procurement institutions have been lowered given international momentum, change related to gender equity has only been partially internalized (Dahlman, 1979). While the movement toward liberalization through legal reform is sweeping, procedures to assess accurate and efficient integration of gender equality concerns in Africa are not. For instance, Nigeria makes provision for some preferential schemes, but the Bureau of Public Procurement is yet to specify either the computational margin of preferences, or the eligibility of women entrepreneurs for public contracts almost ten years after the adoption of the new procurement law. In Rwanda, the margin of preference is ten percent and still, there is no clear language about women. In Ethiopia, gender equality appears literally in form only. Malawi, Mauritius, Namibia and Liberia place a premium on price preference, local goods and regional benchmarks without a specific articulation of the gendered implications of this prioritization in public procurement. Other countries such as Cameroon, Central African Republic and Sierra Leone have adopted quotas with preferences or reservations schemes or both. Thus, legislations and regulations of gender equality in public procurement are far more chaotic than the institutional legal reforms that have taken place over the past decades in most countries in Africa. When compared with low achievers, states with high score on women's parliamentary representation do not seem to have a better or comprehensive policy for gender equality in public procurement.

The chaotic diffusion of gender equality policy in public procurement schemes speak to the absence of a global platform for advocacy in this strategic area of development. This chaos reveals at least two other things: one is the unguided nature of gender equality policy taking place in the context of public procurement

reform in Africa. Second, is the increasing difficulty of the state to articulate comprehensive gender policy in the context of shredded sovereignty in the delivery of public works, goods and services. The implication for gender equality is twofold: First the chaotic diffusion of policy suggests states are either not learning from each other -- i.e., focusing on the policy itself and its effectiveness,-- but imitating each other --i.e., copying from another state to look like it—(Mesenguier 2006; Simmons et al, 2006; Roger 1995; Shipan & Volden, 2008;). Second, chaotic diffusion may signal the attempts to simultaneously conform to the global pressure for economic liberalization while seeming to respond to domestic demands for gender equality. This dual pressure then may lead to conditional learning processes (Gilardi, 2010) explaining the survival of gender policy preferences in conventional arenas (national bureaus, parliamentary representation) and their retrenchment in unconventional ones such as government outsourcing subject to heightened influence by actors and conventions beyond national borders.

As the first part of this paper suggests, international financial institutions such as the World Bank played a key role in framing the axes of public procurement reform in Africa and delineated fault lines of compliance with international expectations. As African states turned to economic liberalism in late 1990s, there was no parallel pressure from coordinated women's organizations to influence procurement policy reform on the continent. Although the World Bank's 2012 *Gender Equality and Development Report* (henceforth WDR 2012) seems to have departed from the antagonistic language of its early public procurement reports on preferential treatment, it still falls short of actionable recommendations to governments. The recognition that "the public sector can also use the power of the purse to demand affirmative action from its contractors, by making a certain level of female employment and management a condition of eligibility for a government contract" (The World Bank, 2012, p. 301) is only one step in the right direction. Nevertheless, reliance on "old style equality opportunities" (Newman 2010, p.9) while expedient in

form, fails to recommend preferential methods that although not guaranteeing that socio-economic objectives will be met, are better at achieving policy goals. Quotas and mandatory goals, in particular, have not been shown to work very well in preferential schemes in public procurement and remain controversial (Arrowsmith et al., 2000; Watermeyer, 2010; Prier et al., 2011).

Furthermore, the World Bank's recognition of the active role that government may play in promoting gender equality in public procurement still frames it as an "exception" to the economic order of eulogized preferences. Ferguson and Harman identify this interplay of ambivalent frames in noting that WDR 2012 "moves beyond an instrumentalist approach to explore issues of agency, leisure and social reproduction [and] broadens the World Bank's approach to gender equality [by] offer[ing] space for potential transformation" (2015, p.659) especially in infrastructure strategy. They nevertheless also highlight important loopholes in the World Bank's strategy. Namely, that "policy initiatives are only recommendations to the regions and countries to interpret" (2015, p. 661). Sub-Saharan Africa, they further note, has not included gender anywhere in its infrastructure action plan. Nowhere is a gender-informed policy more needed than in the public procurement of infrastructure as table 1 above shows. Gender equality in infrastructure contracts is not just about employment, but also about specific discriminations against women in nontraditional trades such as in business and the construction industry (Institute for the Equality of Women and Men, 2007; Denissen & Saguy, 2013; Wright, 2014).

### **From Preferential to Non-Negotiable Gender Agency in Public Procurement?**

Concerns about substantive transformation of gender equality in public procurement certainly demand institutions that enable the transformation of agency itself. While African countries have adopted new procurement laws, they invariably rely on non-elected expert regulatory bodies to determine the scope and eligibility of

various groups for preferential schemes. This institutional arrangement poses significant challenges to coordinating advocacy actions. It also potentially empowers politicians to conveniently manipulate loopholes through the use of contract awards as procurement rent to selected groups thereby stifling accountability (Dannin, 2010; Warner & Hefertz, 2002). Kenya, for instance has adopted a reservation scheme apportioning thirty percent of its procurement to enterprises owned by women or youths. This change was spearheaded by President Kenyatta. While some see this change in a positive light, others are concerned that too much leverage from the Executive may turn into elite capture of women's agenda and issues (Eisenstein, 1999; Abdulai & Hulme, 2015; Amadi, 2015) especially as women are forced to compete for gender equality as "smart economics" (Kirton, 2013) for entrepreneurs only.

Thus to bridge economic and social equity concerns in public procurement, an epistemic shift is needed to explore the various forms of inclusion and exclusion of women's agency within public management regimes; women's agency as entrepreneurs, workers and consumers of public works, goods and services. By investigating the ways in which potential opportunities intersect with gendered vulnerabilities, questions emerge about how priorities are set in national policy mechanisms; what level of service quality receives and justifies funding, the conditions under which regulatory oversight contributes to keeping politics out of procurement managerialism (Stone, 1997; Preuss, 2011). The African Union offers a political vision that might serve the interest of advocates for gender equality in public procurement. Notwithstanding international constraints put on national and local public procurement (Ackerman, 2011), African Union's inclusive development agenda opens up an advocacy space for what Warner & Clifton call "Polanyan counter movements" in public services delivery (2013) to renegotiate gender-sensitive responses to government outsourcing in Africa.

In June 2015, the African Union (henceforth AU) commemorated Africa Public Service Day under the theme "The



Role of Public Services in Women Empowerment, Innovation and Accessible Service Delivery in Africa.” The AU not only called for “gender centered public service on the continent,” it also recognized that “effective guarantee of women empowerment in African Union Member States was a *non-negotiable* pre-requisite to ensure the participation of women and provide equal opportunity for men and women in society.” At the core of the AU’s vision is the prioritization of *inclusive communication* strategies in all public service institutions. This focus on political communication renders possible empirical exploration of “policy narrative as a form of policy marketing” (McBeth et al., 2014, p.227) for gender equality public procurement in the future. This explorative journey calls for policy entrepreneurs to understand both the limits and potential that government outsourcing present to the struggle for gender equality in Africa.

As governments in Africa are challenged to find new ways of financing development, outsourcing has tremendous implication for gender equality for women innovators and entrepreneurs, women as consumers of public goods and services, and women as professionals within the public sector itself. As studies show in the context of Europe, “the way that public services are governed, resourced funded and delivered is crucial to women’s lives” (Conley & Page, 2015; Conley & Wright, 2015) and wellbeing (Glasby, 2012). In Africa, issues range from access to healthcare and care services (Nkrumah & Mensah 2014; Perrot & Roodenbeke, 2012), access to land (Bates 2005), equal wages (Ruijter et al., 2005), security and peace (Enloe 1989; Avant 2005; Dickinson, 2011; Stachowitsch, 2013), and affordability of bidding opportunities to women entrepreneurs...etc.

To illustrate, The United Nations Conference on Trade and Development, (henceforth UNCTAD, 2013) conference on development finds that although Senegal and Kenya reformed their procurement laws, coordination problems between various departments has limited the participation of SMEs in the \$78 and \$295million respective spending on the procurement of computer software and services in 2011. Although UNCTAD’s study does

not provide ITC data by gender in small and middle size enterprises (SMES), a recent report by International Trade Center (2014) shows that legal provisions do not lead to substantive participation of women-owned business in public procurement without careful stimulation of entrepreneurship.

Stimulating a global and national platform for action on sourcing from women vendors requires political action simultaneously concerned with adding to the pool of potential suppliers and subtracting from the pool of potential disempowerment outcomes for women users of public works, goods and services (Benjamin, 2015). Put differently, to bring about substantial gender equality/opportunities within public procurement regimes in Africa, advocacy must delineate both the negotiable and non-negotiable within public procurement production-consumption spectrum. Worth noting is the gendered dynamic within subcontracting chains in government procurement. The incorporation of gender quotas and gender sensitive language in government preferential procurement policies appears to have had some unintended consequences such as the “race to the bottom” elsewhere (Blenker & Christensen, 1995; Mangum, 2010); a phenomenon common to service delivery chains where the affirmative action regulation applies to the prime bidder but fails to be enforced in the supply chain of subcontractors. This lack of systemic regulation of the supply chain often leaves marginal communities and women stuck in lower wages and unending cycle of poverty. Thus, linkages between regional development, entrepreneurship and public procurement with respect to gender equality are not sufficiently constructed without careful consideration of institutional and societal enablers as well as barriers to sourcing from women-owned enterprises. Linkages also call for institutional multilevel analysis in future work (Rolfstam, 2015) to capture adaptation and innovation factors that influence public procurement reform in Africa. A reading of formal institutions in the selected countries reveals the political economy of trade regulation through public procurement reform is yet to

holistically account for the anthropological and gendered dimensions of sovereignty (Chalfin, 2010).

### **Conclusion and Recommendations**

I started this essay by arguing that the restructuring of sovereignty through public-private partnerships forces us to revisit the place and function of women's status as a norm used to ascertain the homogenization of an international society. An examination of public procurement policies in a context of trade liberalization in selected countries in sub-Saharan Africa, reveals that gender does not enter contractual agreements between the state and its suppliers as a normative category. Where gender considerations are accounted for, they appear as a subcategory of preferences which justification remains subordinated to the logic of market preferences. Analysis also reveals a chaotic adoption of gender in public procurement laws without substantial consideration for enabling as well as disabling factors that impact women as potential vendors to government and users of public works, goods and services. In sum, public procurement reform is yet to show comprehensive and harmonized patterns with regard to gender equality in the selected countries. Although gender norms have not been totally displaced in public procurement reform, they are essentially edging on the frontier of rational economic choice that sustains trade liberalization. The role of international financial institutions such as the World Bank has been explored as well as the quasi-absence of a global, regional, and national advocacy movement for gender equality in public procurement schemes. Worldwide, the scholarship is nascent and will hopefully catch up with the fast pace of policy change proposed in the UN post-2015 development framework.

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