

The influencing Factors of Public
Procurement Policy Development; The Case
of Libya

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Abstract

The global economic crises that have emerged over the past few years have put a tremendous strain on (and remains a challenge for) all the major economies of the world. Whilst achieving a balance of retaining front line services for citizens and keeping staff, and making economies fit for purpose in the long term is a challenging task, procurement can have a substantial role to play in achieving this. Sound public procurement policy brings immediate and tangible macroeconomic benefits, where more cost-effective procurement relaxes budgetary pressure and creates fiscal space. The public sector represents about 40-45% of the world's economies; in some African countries it can be as much as 80%. The public procurement process displays major differences in the way it is organised and operated across the world: different organisational structures; different types of governments; different regulatory, legislative and funding arrangements, and, of course, different cultures. This research aims to look at the influencing factors of public procurement policy and its development in Libya.

The revolution domino effect of the Arab Spring in the region in late 2010 occurred because of a number of reasons, predominantly economic, social and political. However, these reasons were mostly magnified by two factors; a young population and high unemployment. Whilst public procurement has become more complex, the balance of the various socioeconomic goals has left officials in government to deal with a wide range of issues. This is particularly true when it comes to the development of the pertinent procurement policies. Procurement policy can contribute immensely to job creation and employment, strengthening of industries, regional involvement, enhancing diversity, securing development aid, and sustainability. According to authorities in the field, the origin of all procurement policy is political. Strategic procurement policy has been adopted by states that have recognised that the procurement function can be developed to harmonise procurement policies with wider government policies. A government (such as Libya's new Transitional Government which is currently dealing with an ailing economy, high unemployment and social fragility) may use public procurement as a tool for economic development, job creation and, ultimately, stabilisation. The intention of this research is to contribute to the existing body of knowledge on state public procurement policy and its development, whilst emphasising inputs and the transformational processes operating in the construction of public policy in Libya. This research attempts to explain how public procurement policies are developed but also what influences that development, and why. The contribution to knowledge will be achieved by identifying barriers within the Libyan context and reporting back into the current scholarly literature. This research also aims to identify findings that may well be used for legislative advocacy in the current Libyan public policy discourse.

1.0 Introduction

The global economic crises that have emerged over the past few years have put tremendous strains on (and remains a challenge for) all the major economies of Europe. Debates about cuts in public spending and increased taxes are taking place now in London, Athens and Paris as they are in most of the European Union capital cities.

‘During the UK General Election, some of the fiercest debates centred around reducing waste in the public sector accompanied by guarantees to safeguard front line services’

(West, 2012, p3)

Achieving the balance of retaining front line services for citizens and keeping staff whilst making economies fit for purpose in the long term is a challenging task for most economies. However, procurement can have a substantial role in achieving this (West, 2012). Sound public procurement policy brings immediate tangible macroeconomic benefits where more cost-effective procurement relaxes the budgetary pressure and creates fiscal space (Vogel, 2009). One initiative taken by the European Union (EU) as part of its plans to tackle the financial crisis is an accelerated public procurement procedure. This initiative should provide a boost to local economies by allowing a more rapid execution of major public investment projects, reducing procurement procedures from 87 days to 30 days. The EU Commission views that speeding up procurement procedures can support member state actions to foster growth in their economies through rapid execution of major public investment projects (European Commission Press Release, 2008).

Although many countries still have ‘closed’ procurement regimes, public procurement has become an international concern. This is evident from the fact that the public sector represents about 50% of many of the world’s economies in terms of spending on providing services and procuring from the private sector. Therefore, many countries have developed highly evolved procurement regimes, which recognise the universal fundamentals of public procurement. Total public procurement in the EU, i.e., the purchases of goods, services and public works by governments and public utilities, is estimated at about 16.5% of the EU’s Gross Domestic Product or GDP (European Commission, 2011).

The public sector represents about 40-45% of the world’s economies; in some African countries it can be as much as 80% (Knight et al., 2007).

'Imagine how much might be saved and reinvested in public service provision if the spending bill was reduced by just 1% in any nation'

(Knight et al., 2007, p1)

Knights et al. (2007) mentions that it is astonishing that so little research has been carried out into public procurement across different nations (and even within nations) to improve procurement when it is such a vital, significant part of all nations' economies. Public procurement displays major differences in the way it is organised and operates across the world: different organisational structures; different types of governments; different regulatory; legislative and funding arrangements, and, of course, different cultures (Thai, 2009). Only ten years ago public procurement was not recognised as a separate function and, more importantly, was not considered a strategic function within the public sector. It was viewed mostly as a set of laws or rules with which to contract with the private sector. As international trade rules were developed (such as trade agreements, regional or international) public procurement has emerged as a vital part of the global initiative to craft a new economic world order (Garcia, 2009). Matthews (2005) states that a search of contemporary literature shows little evidence of public procurement penetrating theoretical boundaries of public management and strategic management. The elevation of procurement to a strategic role has been the focus of considerable attention during the 1990s, states Murray (2007). However, most of the initial literature was set primarily within the private sector and was predominantly focused on the manufacturing industry, with comparatively little attention given to public sector procurement strategy and management. It has only been in the last decade that public procurement has been recognised as different from that of the private sector and was developed into a research discipline in itself (Murray, 2007). Walker (2007) also mentions that public procurement is a significant but yet an under-researched area.

1.1 The Need

Towards the end of 2010, the southern Mediterranean countries witnessed extreme and dramatic changes that changed (and will continue to change) the political, economic and social climate for years to come. The political upheavals that began in Tunisia spread to Egypt, Libya, Yemen, Bahrain and Syria, clearly showing the frustrations being felt across the Middle East and North African (MENA) region with regards to economic and social challenges. The region was facing the biggest unemployment crisis in a generation, even more so now. Before the ‘Arab Spring’, unemployment rates in Libya and Egypt were 27%, and 31% in Tunisia. In 2012, an additional increase of 11% was experienced, and if the economic recovery of Egypt, Libya and Tunisia continues at the slow pace observed in 2011 and 2012, this rate may further increase (International Labour Office, 2012). In a region where 70% of the population is under the age of 30, it was only a matter of time that the lack of economic progress and poor governance would cause the collapse of the regimes maintaining power.

The MENA countries are the lifelines of world trade, linking Europe to Asia and Africa. Between them they possess 54% of global oil reserves. The transition to democracy since the 2011 uprisings will continue to determine the region’s stability and its economic prospects for decades to come (Dadush & Dunne, 2011):

‘Getting on a path of sound economic growth will greatly enhance that transitions to democracy succeed’

(Dadush & Dunne 2011, p131)

The justification for this study is now perhaps even more relevant after the conflict in Libya and the Arab Spring in the region in general. The revolution domino effect in the region had occurred because of a number of reasons, some of which have been outlined above, and they are predominantly economic, social and political. However, these reasons were mostly magnified by two factors: a young population and high unemployment. Franco Frattini, Italy’s Minister of Foreign Affairs mentioned during the Libyan uprising that stability in Italy is linked to stability in Libya. Clearly, the risk of protracted instability in Libya could have serious consequences for Italy in terms of illegal immigration and energy supplies to Europe (Varvelli, 2012). This is similar to the much earlier observation made by Winston Churchill during World War II. Libya, insisted Churchill, was the soft underbelly of Europe.

Economically, Libya is of crucial significance to Europe's supply of oil and gas, and the impressive liquidity of Libyan banks makes it attractive for ambitious companies struggling to attract funds in cash-strapped Europe (Jehani, 2012).

The best instruments to support a transition to democracy are enhanced trade agreements, which not only promote market access but also maximises competitiveness, which in turn, enhances job-promoting reforms (Dadush & Dunne, 2011). Whilst public procurement has become more complex, the balance of the various socioeconomic goals has left officials in government to deal with a wide range of issues. This is particularly true when it comes to the development of the pertinent procurement policies. Procurement policy contributes immensely to job creation and employment, strengthening industries, regional involvement, enhancing diversity, securing development aid, and sustainability (Thai, 2009) (Knight et al., 2007). According to Thai (2009) the origin of all procurement policy is political. Strategic procurement policy has been adopted by states that have recognised that the procurement function can be developed to harmonise procurement policies with wider government policies (Johnson, 2009). A government (such as Libya's new Transitional Government which is currently dealing with an ailing economy, high unemployment and social fragility) may use public procurement as a tool for economic development, job creation and, ultimately, stabilisation.

1.2 Research Outline

In summary, the previous scholarly work on this subject from the above-mentioned authors (for instance Matthews, 2005; Murray, 2007; Garcia, 2009) reveals a clear need for further research into public procurement policy development in various contexts. Furthermore, others (such as Knight et al., 2007; Thai, 2009; Johnson, 2009; West, 2012) have advocated the strategic importance of public procurement development as a vehicle to enhance a wide range of social, economic and political objectives. As previously argued, these studies have a fundamental significance in the case of Libya (see also Dadush & Dune, 2011; Jehani, 2012). The following section formulates the gaps in the literature into three research questions, which, in turn, generate the research aim and objectives.

1.2.1 Research Question

What are the influencing factors that directly or indirectly affect procurement policy development in the Libyan context? How do these factors affect public procurement policy development and why do they exist?

1.2.2 Aim

This research aims to investigate the public procurement policy development during the People's Authority governance system in Libya and identify influencing factors that affect procurement policy development in the Libyan context.

1.2.3 Objectives

- To review the relevant literature on public procurement policy;
- To critically analyse current procurement policy in the Libyan context;
- To explore how and why procurement policy and strategies are developed in Libya and if they are integrated within wider government visions; and
- To explore how sound procurement policy could be essential for Libya's stability and the region as a whole.

1.3 Significance and Intended Contribution of the Research

The intention of this research is to contribute to the existing body of knowledge about state public procurement policy and its development, whilst emphasising inputs and transformational processes operating in the construction of public policy in Libya. The distinction in varieties of policy analyses is in terms of explicit purpose, essentially, separating analyses **for policy** and analyses **of policy**. Analysis **for policy** is prescriptive, i.e., it is involved with formulating policies and proposals. Analysis **of policy** on the other hand, is analytical and descriptive, i.e., it attempts to explain policies and their development (Gordon et al., 1977; Hill, 1993). This research is concerned primarily with the latter rather than the former, i.e., it attempts to explain how public procurement policies are developed but also what influences that development, and why. This is extensively discussed and scrutinised within Chapter 4, Research Methodology. Therefore, the contribution to knowledge will be achieved by identifying barriers within the Libyan context and reporting back into the current scholarly literature. This research also aims to identify findings that may well be used for legislative advocacy in the current Libyan public policy discourse. Although

the People's Authority has now ended its period as the governing system in Libya, the vast majority of laws, legislation and directives are still in place and will be used until the newly elected constitutional assembly drafts a constitution. This constitution will then go to a public referendum, ultimately paving the way to the nature of governance in Libya. Figure 1.1 illustrates the research question and the intended contribution of knowledge from this research, whilst highlighting preliminary findings from the literary resources about barriers in public procurement policy.

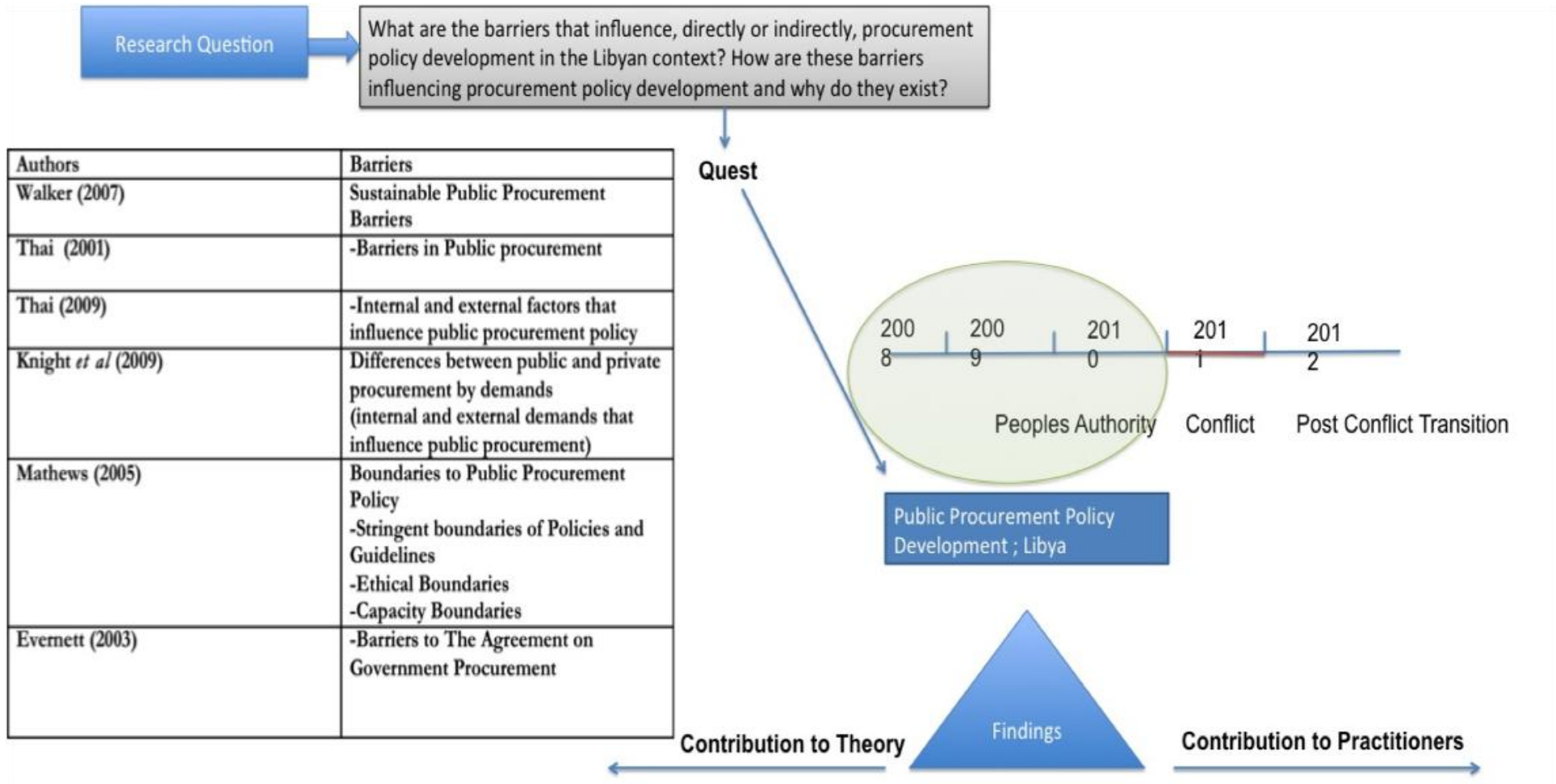


Figure 1.1: Research Aim and Expected Contribution to Knowledge

1.4 Structure of Thesis

The structure of the thesis is illustrated below in Table 1.1. Chapter 1 highlights the main research questions and makes the case for the aims and objectives. It also provides an overview of the need and expected contribution to knowledge. Chapter 2 is the literature review. This chapter commences by defining the term public procurement policy. It will then explore the literature by identifying the key differences between public and private procurement. The chapter will then go on to look into public procurement as a policy tool and then explore the literature on the various public procurement policies adopted across various public sector contexts internationally. The literature review aims to identify areas of consensus and debate, and to identify gaps in knowledge within that context. Chapter 3 provides a background to the context and the governance systems in Libya during the course of this research by highlighting policy development and decision-making processes in the Libyan context. This chapter will also capture the longitudinal changes in context during the course of this research. Chapter 4 is the methodology chapter. In this chapter, the research aims and objectives are revisited by illustrating the research questions and by making the link with the methodology and philosophical underpinnings. Chapter 5 presents the findings and their analyses, leading to the discussion in Chapter 6 to identify trends found, whilst comparing and contrasting the research findings with the literature. The conclusion chapter will ultimately illustrate what these findings mean and what value they hold.

Chapter 1	Introduction
Chapter 2	Literature Review
Chapter 3	Context and Background
Chapter 4	Methodology
Chapter 5	Findings
Chapter 6	Discussion
Chapter 7	Conclusion

Table 1.1: Chapter Sequence in Thesis

2.0 Literature Review

2.1 Introduction

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

The structure of this literature review will start by defining the term ‘public procurement policy’. It will then explore the literature by identifying the key differences between public and private procurement. The chapter will then go on to look into public procurement as a policy tool. The chapter will next explore the literature on various public procurement policies adopted in across different public sector contexts internationally; this will further lead to identifying methods of assessing public procurement policies in the literary sources, and applying them to the Libyan context (the Administrative Contracts Regulations or ACR). The literature review aims to identify areas of consensus and debate, and identify gaps in knowledge within that context.

The public sector represents about 40-45% of the world’s economies; in some African countries it can be as much as 80% (Knight et al., 2007).

‘Imagine how much might be saved and reinvested in public service provision if the spending bill was reduced by just 1% in any nation’

(Knight et al., 2007, p1)

Knight et al. (2007) mentions that it is astonishing that so little research has been carried out into public procurement across different nations and even within nations to improve procurement when it is such a vital and significant part of all nation’s economies. Matthews

(2005) also states that a search of contemporary literature shows little evidence of public procurement penetrating theoretical boundaries of public management and strategic management. The elevation of procurement to a strategic role has been the focus of considerable attention during the 1990s, states Murray (2007) but most of the initial literature was set primarily within the private sector, predominantly focused on the manufacturing industry with comparatively little attention given to public sector procurement strategy and management. It has only been in the last decade that public procurement has been recognised as different from that of the private sector and developed into a research discipline in itself (Murray, 2007). Walker (2007) also mentions that public procurement is a significant but as yet an under-researched phenomenon.

‘Despite the scale and complexity of government purchases, the field of public procurement has remained a relatively under-researched area amongst economists, lawyers and other social scientists’

(Arrowsmith & Hartley 2002, p34)

2.2 Public Procurement Policy

Many definitions have been used to define ‘policy’. The word originates from the Latin word ‘policis’ meaning to look after, hence the word police was also derived from the Latin word. The word ‘policy’ is not a tightly defined concept but a highly flexible one, used in different ways on different occasions. Dye (1992) states that public policy is whatever governments choose to do or not to do. Cochran & Malone (1995) carry this further, stating that public policy consists of political decisions for implementing programmes to achieve social goals. Table 2.1 illustrates the various definitions of public policy.

Definition	Author
The term public policy refers to the actions of governments and the intentions that determine those actions.	Clarke E. Cochran et al., 1999
Public policy is the outcome of the struggle of government over who gets what.	Clarke E. Cochran et al., 1999
Whatever governments choose to do or not do.	Thomas Dye, 1992
Stated most simply, public policy is the sum of government activities, whether acting directly or through agents, as it has influence on the life of citizens.	B Guy Peters, 1999

Table 2.1: Defining Public Policy

(Birkland, 2005)

‘Procurement is the activity of assessing, buying and receiving goods, works and services. It is public whenever this process is performed by public organisations or whenever it is performed on their behalf or again funded by public organisations’

(Adotevi, 2004, p253)

The United Nations (UN) views public procurement as the overall process of acquiring goods, civil works and services which includes all functions from the identification of a need, selection of potential sources, contract award and its administration to the end of service or life of asset (Thai, 2009). A distinction must, at this stage, be made between government spending and what is typically referred to as state spending on goods and services, as the former includes spending on wages, salaries and pensions. In this research, the terms may be used interchangeably, however, they only cover spending, purchasing, procurement and buying of goods and services (Dawar & Evenett, 2011). The buying of goods such as weapons and grain by states has been practiced throughout the ages. Callender (2004) states that procurement practice can be traced back over 2,800 years. Written on a red clay tablet found in Syria, the earliest procurement order dates from between 2,400 and 2,800 BC, mentions Thai (2001). The area of government procurement is very dynamic and a number of issues such as economics, law and public policy combine in formulating complexities both

for the public and private sectors. Sementelli (2010) mentions that public procurement tends to rely heavily on the professions of law, economics and operations management, particularly at the micro level. Public procurement is a route to sales for the private sector to some of the biggest clients in the world, and has an impact on domestic economies and international trade. Clear procurement policies and transparent and efficient actions can foster and strengthen markets so, from this point of view, public procurement is clearly a major economic driver and can be used to influence critical economic conditions. Public procurement is complex in nature; Callender and Matthews (2004) have noted that public procurement and the supply chain consist of various bodies of knowledge, and Thai (2009) has illustrated these, as outlined in Table 2.2.

Disciplines Related to Procurement	Representative Examples
Information Science	E-Commerce, Inventory Management
Accounting and Finance	Costing, Financial Modelling, Whole Life Costing
Economics and Law	Evaluation of Procurement Policies and Contracts, Management
Sociology and Marketing	Organisational and Markets Management, B2B Relations
Organisational Behaviour and Psychology	Change Management, Supplier Performance Management

Table 2.2: Related Disciplines of Procurement and Supply (Thai, 2009)

Public procurement has always evolved and this evolution increased during the 1990s, as governments at all levels were pressured into doing more with less, with governments such as the UK's spending over £24 billion a year on goods and services (Brooks, 2002). Matthews (2005) notes that the importance and potential impact of public procurement is obvious, because procurement professionals can control the destination of such a significant amount of government money. Since the 1980s and 1990s (and indeed more so now) governments have been striving to do more with less (Matthews, 2005) so, while governments all over the world face constraints on spending, the public demand for increased transparency and efficiency has intensified, and both social and economic pressures on the domestic and international fronts have required governments all over the world to seek better performance from their public

sectors (Thai, 2009). The increased scrutiny procurement is receiving warrants a mention by Coggburn (2003), where all public agencies, regardless of size, require the purchase of goods and services. If the procurement function fails to deliver quality goods and services in a timely fashion and at a value for money price, the performance of government suffers (Coggburn, 2003).

2.3 Public Procurement vs. Private Procurement

The function of supply in the private or public sector is to manage the delivery of goods and services through the supply chain in a cost-effective manner (Johnson et al., 2003). It is, however, recognised by Johnson et al. (2003) that there are a number of unique aspects in public sector procurement, characterised by high levels of public disclosure. The public sector represents about 40-50% of many of the world's economies in terms of spending on providing services and procuring from the private sector. Countries such as Singapore spend approximately 18% of its economy, whilst other developing countries spend up to 80%. Public procurement is a significant but a yet an under-researched phenomenon (Walker, 2007) and it still lags far behind private sector procurement in terms of scientific analysis. Although not dissimilar in terms of principle as both have to acquire goods or services, they are in fact very different (Knight et al. 2007). Thai (2009) suggests that the core difference between public and private sector procurement is the relationship between both parties. Walker (2009) suggests that the nature and context of public sector purchasing differs from commercial practice because, as well as both being concerned with reducing costs and achieving value, public sector buyers have the additional task of achieving social, environmental and other benefits in their purchasing to fulfil the responsibilities of government to society. When comparing public and private sector procurement, it appears that the demands on public procurement are greater and more highly varied than those on the private sector. PIA, the Dutch government procurement organisation, estimates that 80% of public procurement is more or less similar to private sector procurement, leaving 20% which is very different because of the various demands upon it (Knight et al., 2007). As governments respond to demands to become more efficient, public procurement practitioners are now expected to focus primarily on the strategic aspects of public procurement and less on routine transactions (Matthews, 2005). Knight et al. (2007) has grouped the various demands that differentiate public and private procurement thus:

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

Knight et al. (2007) mentions that the external demands are those of transparency, integrity, accountability and exemplary behaviour, because a government is expected to set an example, not only in terms of ethical standards, but in terms of efficiency and effectiveness of their own operations. Public procurement is often in the media for these particular reasons; fraud and corruption are dominant in some countries and those who have overcome these issues by introducing various reforms to their systems, are often in the media for projects being late, over budget, or not delivering to a specified standard. This clearly sets out the importance of public sector procurement and its rise on many political agenda globally (Knight et al., 2007). Thai (2009) mentions that public procurement has become much more complex than ever before, asking public procurement practitioners to deal with a broad range of issues, such as:

- Balancing the dynamic tension between:
 1. Competing socioeconomic objectives;
 2. National economic interests; and
 3. Competition as required by regional and international trade agreements.
- Satisfying the requirements of fairness, equity, and transparency.
- Maintaining an overarching focus on maximising competition.
- Utilising new technology to enhance procurement efficiency, including e-procurement and purchase cards.

Where, to a large degree, private organisations are permitted to invoke whatever criteria they like and use whatever control procedures they see fit to govern the outflow of money to suppliers, the public sector operates under the constraints of having to behave rationally and fairly, as good custodians of public money (Thomas, 1919 as cited by New et al., 2002; Turpin, 1989 as cited by New et al., 2002). Knight et al. (2007) mentions that, as well as the external demands that face public procurement, internal demands in a public organisation also differ from that of the private procurement organisation; public organisations have different goals at the same time, some of which may be conflicting such as good sewage

systems or road works. Public organisations also have political goals; an official may have been elected on a platform of these particular goals. Clearly, stakeholders in public procurement are many: citizens, taxpayers, the electorate, elected officials, management, and procurement officials, all of which have different objectives and agenda. Whilst public procurement buys goods or services for themselves, they are also buying for the citizen that they are expected to serve. The suppliers in this case are also citizens, taxpayers and the electorate. Public procurement is budget driven, i.e., the budget determines what can and cannot be procured. These budgets are open and the public, from which suppliers are sourced, have access to departmental budgets, thus changing supplier-buyer relationships drastically from private procurement. The demands on the process of public procurement fit very tightly within strict limits that are imposed by legal procedures and legislation, such as EU rules or local political choices. However, the same public sector itself is also, to a large extent, the policymaker in this case and determines the rules and regulations in which it has to operate. Given these differences it seems justified to state that public sector procurement is more complex than private sector procurement (Knight et al., 2007). Costantino et al. (2012) too states that, although government and private procurement share the same purpose of sourcing supplies at the cheapest price and at an acceptable quality, several differences can be found between the two, one of which being that government administers money that belongs to all.

Procurement may have more of a strategic character in the private sector than in the public sector, argues Snider (2006), and it is the difference in the tactical and strategic role of procurement that is attributable to the difference between public and private procurement. Matthews (2005) mentions that public procurement practitioners are told by their private sector peers to be more proactive to add value, however, tradition has decreed that public sector practitioners are required first and foremost to satisfy the complex accountability process of the government. Murray (2007) further states that at the procurement policy level, there is clearly a fundamental and accepted difference between private and public procurement, due to public procurement sitting within legislative, administrative and judicial frameworks set by politicians.

Public and private procurement more or less share many objectives, such as achieving value for money and guaranteeing an efficient procurement process. Up until recently, it was assumed that only public procurement included social and environmental objectives but this is not necessarily the case and, with Corporate Social Responsibility, the private sector has

become increasingly focused on promoting social and environmental objectives (Arrowsmith, 2010).

Public procurement objectives not only differ from private procurement but also within different public procurement systems. The significance and existence of different objectives depends on the nature of the system itself and must be relevant to the system itself; how these objectives relate to one another, the impact each has on the other, and the priority of each, play an important part in identifying the systems approach to procurement (Arrowsmith, 2010).

Arrowsmith (2010) identifies eight objective that are usually shared by public procurement systems, as mentioned the significance of each objective differs according to the system. The objectives of public procurement systems as identified by Arrowsmith (2010) are:

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

The design, application and interpretation of legal and regulatory rules directly impacts the implementation of each objective. Knowing the characteristics of the system, as mentioned above, and exercising the discretion that exists within the rules is crucial in order to reduce the occurrence of problems that may occur and the impact of such problems. The manner in which problems are addressed also can differ. This can be due to the culture of the organisation or the society in which the system occurs; if levels of corruption are relatively high, or if an environmental issue is culturally favoured, this will impact the vigour with which each problem is tackled. This same theory is applied to how systems address objectives when significance and priorities are similar. Society and the culture of the organisation dictate how these objectives can be reached and therefore they cannot be universal (Arrowsmith, 2010).

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

2.4 Procurement as a Policy Tool

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

The management of public bodies is a complex activity that entails the balancing of different and sometimes, somewhat contradictory, objectives (Kamoche, 1997). The relationship between public procurement and good governance is subject to increasing attention (Knight et al., 2007). Effective procurement, mentions Callender (2007), provides governments with a means of bringing about social, environmental and economic reform and malpractice within public procurement demonstrates a failure of governance. Although some countries still develop their procurement policies to address only the relatively narrow agenda of value or process efficiency, a broader and a more strategic policy has been adopted by states that have recognised that the procurement function can be developed to harmonise more effectively the elements of procurement within wider government policies (Thai, 2009). Arrowsmith (2004) mentions that, traditionally, governments use their extensive power to use procurement as an instrument to achieve a variety of objectives. Some objectives which need to be constantly weighed are the trade-offs in conflicting procurement objectives; these could be trade-offs between quality and cost, timeliness and cost, and risk and cost. It is not new that policymakers (i.e., governments) have increasingly used public procurement as a political tool to achieve socioeconomic goals. Procurement as a support for broader government policy varies obviously to what that policy is, but procurement policy contributes immensely

to job creation and employment, strengthening a particular industry, regional involvement, diversity, development aid and sustainability, and these have been described by Thai (2001) as 'non-procurement goals'.

There are numerous examples of how socioeconomic policies have been supported by procurement. Watermeyor (2008) highlights that the United States (US), in order to ensure a market share for small and minority businesses, uses reservation and supply side schemes. In Botswana, a legislation addition in 2001 allows schemes to promote Botswanan-owned companies; in South Africa, successful tenderers, with certain criteria, must participate in the South African economy (Watermeyor, 2008).

Procurement as a social policy has been seen where governments seek to meet certain needs of interests groups, such as ethnic minorities, small vendors and local vendors. Advocacy groups on issues, such as the environment, for example, also look to government to gain preferential treatment for businesses that uphold their ideologies. However, with that said, Thai (2009) mentions that major deficiencies are experienced by governments that provide preferable treatment to particular interest groups and that, sometimes, the government may seem unfair in its procurement and lose credibility. However, procurement as an economic policy compensates for the unfairness perceived in the private sector which tends to be dominated by large organisations and global suppliers. This is evident in the US where federal purchases are the most important national economic factors, by providing incentives to suppliers who buy American or produce their goods or services in the state for the government. This allows for a boost to the local economy by keeping as much of the supply chain in the state as possible. Procurement is a political tool and the origin of all procurement policy is political (Thai, 2009). Murray (2007) highlights why political procurement is important; he explains that the public sector works within a narrow framework of democratic governance strategy and management, where local people exercise their right to determine how and by whom they should be governed through the ballot box. He continues further to explain that, in turn, those who are elected not only have a representative advocacy role but are democratically accountable to their electorate for their decisions. Aspirations to de-politicise public procurement faces several hurdles, decisions on appropriation can involve financial hardships and job losses (Schapper et al., 2006).

In a democratic system of governance there is a distinctive division of powers between the legislative, executive and the judicial branches of the state; however, the procurement

authorities and responsibilities vary among countries (Thai, 2001). In countries such as the United Kingdom (UK), policy implementation is carried out by the executive branch of government, i.e., Cabinet, through non-legislative means, i.e., executive orders. In the US, the legislative branch of government primarily influences the public procurement system through legal means, i.e., laws (Thai, 2001). Along with transparency, the key and broadly accepted principle underlying a modern public procurement system is open and unrestricted competition; universal access to the procurement market (Sigma, 2009). The policy context concerning public procurement in the UK is based on a set of guiding principles of transparency, competitiveness, accountability, efficiency, legality and integrity that have the ultimate aim of supporting the delivery of best value for money in public procurement (HM Treasury as cited by Walker, 2007). In the EU, public procurement is governed by a similar set of policy frameworks as described for the UK; however, in addition to the underlying principles of transparency, accountability, etc., the European Union (EU) public procurement policy framework is designed for competition in European markets by promoting the free movement of goods and services across its borders. In the US, the public procurement policy framework includes an emphasis on avoiding discrimination and providing equal opportunities. Where these issues are most crystallised is in the development of federal policies that promote procurement from women and minority-owned businesses with some emphasis on purchasing from indigenous peoples (Walker, 2007). For almost two decades, the US government has been providing equal opportunity programmes for minority businesses competing for US government contracts; the objectives of this are:

- To ensure non-discrimination in the award and administration of contracts;
- To create a level playing field on which minority businesses can compete fairly for contracts;
- To assist minority-owned businesses in competing outside these government agencies;
- To help remove barriers to minority businesses; and
- To assist in the development of minority businesses so that they compete outside these programmes.

(Geter, 2006)

In Canada, policies emphasise similar aspects to those found in the EU, which include mandates for promoting competition and value for money; they also cover non-discrimination

by ensuring procurement opportunities for businesses owned by indigenous people (Walker, 2007).

In South Africa, public procurement is seen as an important policy lever in the post-apartheid era, where the Black Economic Empowerment initiative prioritises public procurement to buy from black-owned businesses in order to redress the economic advantages of white-owned business attributed to apartheid. Prior to 1994, the South African procurement system favoured large and established businesses and it was very difficult for newly established businesses to compete in public sector procurement. In 1994, this changed when public procurement was granted constitutional status and was used as a policy tool to address past discriminatory practices (Bolton, 2006). The South African Constitution now requires public procurement to be carried out in accordance with a system that is fair, equitable, transparent, competitive and cost-effective (Harpe, 2009). Public procurement frameworks in both developed and developing countries are characterised by a tension between public expectations of transparency and accountability, and efficient and effective resource management (Schapper et al., 2006).

In responding to the very broad question of what government expects of procurement, Martin Sykes, a UK senior civil servant, addressed an all-party assembly of UK Members of Parliament, highlighting the wide range of issues that need to be considered by political leaders, and the complexity of these issues (Knight et al., 2007). Figure 2.1 illustrates the themes in the objectives and impact of public procurement.

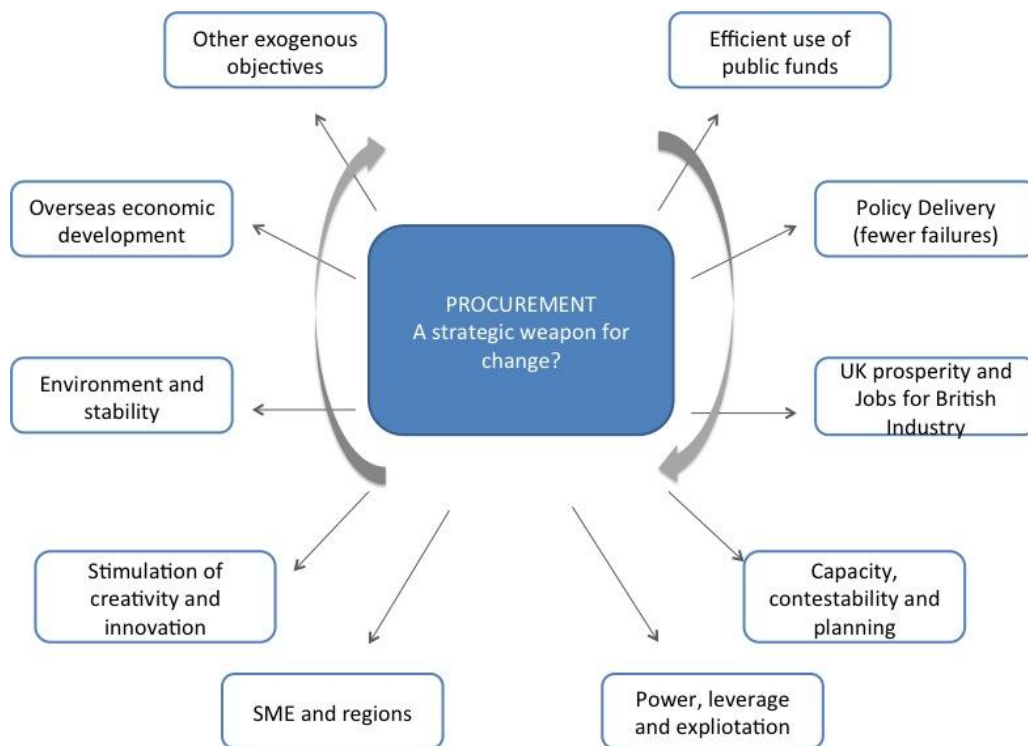


Figure 2.1: Themes in the Objectives and Impact of Public Procurement (Knight et al., 2007)

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

- Job creation and employment (e.g., by setting up purchases in a way that jobs are created).
- Strengthening industry (e.g., by offering long term contracts).
- Small and Medium-sized Enterprises (SME)/regional involvement (e.g., by splitting up purchases in smaller lots so that smaller companies can compete).
- Diversity, i.e., favouring groups of suppliers (minorities, women-owned, disabled, local firms).
- Stimulating innovation (e.g., by asking for innovative products and processes).
- Sustainability and environment (e.g., by requiring or favouring sustainable and environmentally-friendly products).
- Development aid: using public procurement to support developing countries by favouring suppliers or products from those developing countries.

(Knight et al., 2007)

SMEs play a vital economic role in many industrialised nations; for instance out of the 4.3 million enterprises operating in the UK over 99% are SMEs. Not only do they generate 51% of the country's turnover, they also have a significant social role too, as they account for 58% of employment in the UK (Walker & Preuss, 2008). Government procurement can have a powerful impact on domestic economies and on national and international trade, where clear procurement rules and transparent and efficient actions can foster and strengthen national and international markets (Garcia, 2009). Government procurement is a major economic driver, states Garcia (2009) and, for this reason, it can be used to influence critical economic conditions such as those that emerged in 2008. In the same way as the EU implemented accelerated procedures to nurture their economies via major public investment projects, other countries, such as Libya, could in fact use public projects and purchases to help kick start a depressed economy, by modification and simplification of its laws to accomplish this (Garcia, 2009).

Many public goods and services have a direct or indirect impact on economic performance and living standards; effective national procurement policies can help improve the execution of state infrastructure projects, yielding export and growth benefits (Dawar & Evenett, 2011).

In the EU, the use of procurement to address social issues has been criticised, primarily due to the inability to quantify the value for money in procurement contracts, as well as fear of discrimination against non-EU suppliers who are not able to adhere to these social clauses. An example mentioned by Erridge (2005) is that, in 1999, Belgium incorporated a social clause that would restrict contractors: when employing unemployed people, contractors could only employ those registered at the Brussels unemployment service. A judgment from the European Court of Justice resulted in contracts being given to tenders more favourable to tackling unemployment, however, this could only be done as a secondary criterion if tenders are almost tied in all other criteria (Erridge, 2005). Erridge (2005) has identified three sets of sometimes-conflicting goals, against which public procurement policy may be analysed:

Regulatory Goals

The main focus is on compliance with the European Union Public Procurement Directives (the 'Directives').

Commercial Goals

Pursuit of commercial goals emphasises the use of market mechanisms, such as competitive tendering, market testing and contracting out, and the Private Finance Initiative, to achieve procurement goals such as reduced cost and increased quality.

Socio-economic Goals

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

Conflicts between Regulatory and Commercial Goals: An overly restrictive interpretation of the Directives and public procurement rules can lead to failure to achieve competitive supply. Adoption of closer supply relationships may reduce transparency, compromise propriety and lead to a greater incidence of fraud.

- Conflicts between Regulatory and Socio-Economic Goals: Protagonists of a restrictive interpretation of the Directives argue that allowing the use of public procurement for socio-economic purposes carries a greater risk of breach, with severe financial penalties if found guilty.
- Conflicts between Commercial and Socio-Economic Goals: Those who argue that only commercial considerations should be taken into account state that the outcome of allowing socio-economic criteria to be considered is likely to be extra or hidden costs (Erridge, 2005).

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

- Public confidence – underpinned by attributes of accountability, transparency, equity and fair dealing.
- Efficiency and effectiveness – the use of public finances to achieve value for money and efficiency of delivery.

- Policy compliance and consistency of public procurement in relation to other policy objectives.

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

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

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

Multi-sector Policy Instrument	
1	Environment protection and related issues, i.e., issues associated with Green procurement, hazardous materials spills, etc.
2	Employment opportunities and income creation in regeneration areas.
3	Business opportunities and/or growth opportunities for SMEs.
4	Education and training, as well as adult basic skills provision.
5	Innovation and technology transfer, e.g., in case of offsets.
6	Promotion of levels of health and safety, as well as local security and quality of life decisions.
7	Attainment of gender equality and affirmative action (such as equal access to opportunities between men and women).
8	Fostering labour mobility or labour flow from one place to another.

9	Improved working conditions and greater respect for human rights.
10	Welfare standards of living, as well as family issues and social cohesion.
11	Compliance with legal requirements.
12	Poverty levels and community wellness.
13	Empowerment and integration of persons with disabilities and the disadvantaged poor groups.
14	Indigenisation of the economy or promotion of companies owned and controlled by indigenous sons of the land.

Table 2.3: Multi-sector Policy Instrument

As indicated in Table 2.3, it is clear that public procurement can be used as a multi-sector policy instrument that has far-reaching implications for a very wide range of socioeconomic development issues (Turyahikayo, 2009).

A procurement system must have clear policies, which may vary according to different economic, social and political environments, e.g., a procurement system within government with an ailing economy, under-privileged groups, environmental degradation or corruption, may focus more on economic development or stabilisation, procurement equity, sustainability or transparency, respectively (Hartley, 2006). In some countries, where the dominant political concern is principles of transparency, equity and fair dealing, public procurement is managed through an extensive regulatory framework, where the framework regulations micromanage the steps throughout the procurement process. This highly regulated procurement environment, states Schapper et al. (2006), is designed to minimise discretion in circumstances to be considered at high risk from unwarranted influence. This prescriptive approach is almost exclusively adopted in developing countries where officials have minimal procurement skills and also to minimise corruption. However, Matthews (2005) mentions that when government agencies are restricted to uniform and routine standards, it limits creativity and innovation. Schapper et al. (2006) also comments that there is indeed a penalty for highly prescriptive, inflexible frameworks, immediately generating tensions with performance and efficiency. An attempt to standardise procurement frameworks is the Model Law on Procurement of Goods, Construction and Services developed by the UN Commission on International Trade Law (UNCITRAL). As international trade rules and regulations entered

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

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

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

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

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

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

(Kashap, 2004)

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

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

(Kashap, 2004)

The African Development Bank's policy is designed to encourage the development and participation of contractors and suppliers from regional member countries of the Bank, i.e., member states. The European Bank for Reconstruction and Development public procurement policies are based on the fundamental principles of non-discrimination, fairness and

transparency. The Asian Development Bank procurement policy is designed to ensure that loans should be used with due consideration of economy and efficiency (Kashap, 2004).

2.5 The European Union Procurement Regime

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

The aim of the European Community was to eliminate the favouritism and protectionism of European public buyers in reserving contracts for their national suppliers by opening up procurement for trade reasons amongst member states. Established in 1957 to promote economic cooperation and peace in Europe, the EC or the EEC (European Economic Community), as it was called before 1993, constituted one element of the broader EU. The EU currently comprises 27 member states namely, Belgium, France, Germany, Italy, Luxembourg, The Netherlands, Denmark, Ireland, the UK, Greece, Spain, Portugal, Austria, Finland, Sweden, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, Slovenia and, most recently in 2007, Bulgaria and Romania (Thai, 2009). These provisions, however, also apply to European Economic Area (EEA) countries, namely Norway, Iceland and Liechtenstein. There are also further ongoing applications for membership by Croatia, Macedonia and Turkey. All these states and the EEA represent a common procurement market of a very significant magnitude (Garcia, 2009).

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

The EC's objective was to create a common free market by removing barriers to trade, labour and capital across its member states, its basic constitutional document was the EC treaty, which placed obligations on member states to comply with legislation from the EC, such as procurement legislation. The administrative arm of the EU is known as the European

Commission, which is responsible for enforcing legislation such as procurement legislation across the EU. Although the EU treaty in itself does not contain provisions specifically on public procurement it does, however, cover relevant areas:

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

(Garcia, 2009)

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

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

Public sector contracts are estimated to account for 16.5% of the EU GDP. The Commission's attempts to use regulation to expose the public sector to increased cross-border competition and greater openness have met with limited success in the past. The first EC directives on procurement were adopted in the 1970s but there was little evidence of their

ability to open up the award of public sector contracts to cross-border competition. The directives were then extended in the 1990s after the Commission’s report in 1996 made it clear that the economic results achieved in public procurement fell short of expectations and, since then, the directives have changed again (Ramsey, 2006). The EU had adopted various procurement directives, however, in 1998, all existing directives were replaced and the rules on contract award procedures are contained in two directives. Adopted in 2004, these are Directive 2004/18/EC and Utilities Directive 2004/17. Directive 2004/18/EC (Public Sector Directive) was transposed by member states into national law in January 2006. The directives regulates contracts awarded by ‘contracting authorities’ in public sectors across the member states; it covers all procurement entities in all member states and government departments, local and regional authorities, any bodies governed by public law.

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

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

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

As mentioned above, the directives only apply to ‘contracting authorities’ and purchasers who do not fall within a contracting authority’s definition are not subject to the public procurement directives. There are two types of entities that are contracting authorities, public authorities and bodies governed by public law. Public authorities means the state (all bodies

that exercise legislative, executive and judicial functions within it), and regional or local authorities.

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

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

- Works contracts = 5.5 million Euros
- Supply contracts = 206,000 Euros
- Service contracts = 206,000 Euros

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

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

- Publish a notice in relation to the intended contract in the official Journal of the European Union;
- Provide minimum levels of information about the procedure and contracts concerned;
- Ensure that minimum periods of time are observed for completion of the various stages of the procurement procedure; and
- Keep candidates updated on the process and informed of the outcome.

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

- Open procedures, whereby all interested contractors, suppliers or service providers may submit tenders.
- Restricted procedures, whereby only those contractors, suppliers or service providers invited by the contracting entity may submit tenders.
- Negotiated procedures whereby contracting authorities consult contractors, suppliers or service providers of their choice and negotiate the terms of the contract with one or more of them.

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

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

1. Lowest price, and
2. Most economically advantageous offer.

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

Thai (2009) mentions that one of the more controversial issues under the EU procurement regime is the extent to which the laws limit governments in using procurement to promote policy goals (non-procurement policy) as discussed earlier, such as economic development of ethnic minority groups. Member states are constrained in their policies. Arguably governments can usually justify hidden political policies, even in the common market, as local suppliers do not face, for example, language barriers and are geographically better located. However, this limit on a government's freedom to implement national procurement policies does cause a degree of conflict. Garcia (2009) argues that, in a decentralised system such as the EU, although the EC treaty must always be followed, in practice it will be national implementation measures that drive the procurement process; the national rules must comply with the EU rules but are always much broader. Garcia (2009) also points out that in a procurement procedure, the focus will be on compliance with EU rules only when there is scope for dispute or challenge. Thai (2009) argues that the very value of the EU approach in achieving the benefits of open markets is questionable for several reasons. Firstly, a degree of discretion remains inevitable, and there is also hidden discrimination. Secondly, transparency rules are somewhat difficult to apply and there may be good cause to reduce transparency where it hinders effective procurement. Due to these very tight constraints, some have suggested adopting a different approach; that the EU regime should only focus on limited and specific types of contracts where the greater cross-border benefits are to be realised, such as very large infrastructure contracts (Martin, 1996 as cited by Thai, 2009). Another radical suggestion is to abandon the EU requirement for transparency and to allow entities to focus solely on compliance with treaty principles in whichever way they choose (Thai, 2009).

2.6 UNCITRAL Model Law on Procurement of Goods, Construction and Services

In 1986, the UN Commission on International Trade Law decided to undertake work in the area of procurement, which led to the adoption of the Model Law on Procurement of Goods, Construction and Services by UNCITRAL at its 26th session in Vienna in 1993 (UNCITRAL, 2012). The law was introduced with a Guide to Enactment that explains the rationale for its provisions to legislators and policy formulators (Garcia, 2009). The Model Law is intended to serve as a model for states for the evaluation and modernisation of their procurement laws and practices, and the establishment of procurement legislation should there not be any in place. This was a response by UNCITRAL to the fact that, in a number of

countries, existing legislation governing procurement was inadequate or outdated (UNCITRAL, 2012). While sound procurement practice and laws are essential in all countries, the Model Law is used around the world both in developing nations and as template for reform in the developed nations (Yukins, 2009).

The Model Law has become an international benchmark in procurement law reform (Garcia, 2009). Enacting states are not required to advise UNCITRAL when they adopt the Model Law but it is understood that the law on procurement has been adopted or used as a basis for local legislation in several states, such as Albania, Azerbaijan, Croatia, Estonia, Gambia, Kazakhstan, Kenya, Poland, Romania and Uganda. The Guide to Enactment comprises a general discussion of the principles and the procedures of the Model Law, followed by an article-by-article commentary. The Law is a suggested text for legislators to perhaps use or tailor to their own local procurement legislation, not a binding prescriptive text, and legislators are free to amend various provisions or adopt them as a whole (Garcia, 2009). UNCITRAL (2012) states that the Model Law may help remedy the disadvantages that stem from inadequate procurement legislation creating obstacles to international trade. UNCITRAL (2012) also mentions that inadequate public procurement legislation results in inefficiency and ineffectiveness in the procurement process, patterns of abuse, and the failure of the public purchaser to obtain value in return for the expenditure of public funds. The objectives of the Model Law are to maximise competition, according to fair treatment to suppliers bidding to do government work, and to enhance transparency and objectivity, all of which are essential to fostering economy and efficiency in procurement, and for curbing abuses (UNCITRAL, Model Law Guide to Enactment, 2012). These have been summarised by Garcia (2009):

1. Maximising economy and efficiency in procurement.
2. Fostering and encouraging participation in procurement proceedings by suppliers and contractors, especially, where appropriate, participation by suppliers and contractors regardless of nationality, thereby promoting international trade.
3. Promoting competition among suppliers and contractors for the supply of the goods, construction or services to be procured.
4. Providing for the fair and equitable treatment of all suppliers and contractors.
5. Promoting the integrity of and fairness and public confidence in the procurement process.
6. Achieving transparency in the procedures relating to procurement.

(Garcia, 2009)

Ssennoga (2006) argues, however, that developing countries face a problem in opening up procurement markets to all suppliers, irrespective of their country of origin, even though the benefit of opening up is that it enhances competitiveness, which ultimately leads to efficient use of public resource. Developing countries who may discriminate against foreign firms are motivated by the desire to achieve benefits such as stimulating industry, fostering underdeveloped regions and job creation (Ssennoga, 2006). Various countries have procurement policies that are intended to protect national sovereignty and, although desirable as this may seem to developing nations, it also has serious implications as far as free trade is concerned. Ssennoga (2006) argues that developing nations are somewhat at a disadvantage; this is due to the fact that developed nations have the capacity to bid in developing countries whilst developing countries lack the capacity to bid in the international procurement market due to lack of expertise and poor production quality, hence deeming them to be uncompetitive. Developing countries may indeed benefit from free procurement markets, however, sovereign nations are only willing to accept foreign competition in procurement markets if they are convinced that the benefits outweigh the loss of power to utilise public procurement as a means towards promoting domestic policies (Discherdorfer, 2000).

2.7 World Trade Organization's Agreement on Government Procurement

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

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

(Arrowsmith, 2011, pp)

The vast importance of government procurement has been enhanced by the increased importance of public infrastructure investment and other procurement activities as an aspect of world economic activity in the context of the recent economic crisis (Arrowsmith, 2011).

Also relevant is an increasing recognition, both in scholarly writing and in public policy formulation, of the role of governance mechanisms, i.e., the rules and institutions that establish the framework for the operation of markets as an underpinning principle of long term economic growth and prosperity (Arrowsmith, 2011).

Trionfetti (2000) states that it is usually recognised that discriminatory procurement favouring domestic suppliers constitutes a barrier to trade and international competition. Opaque tendering processes and poor governance tend to discourage potential bids from both domestic and international firms, often leaving governments dependent on a small group of insider firms, and this, according to Evenett (2003), often leads to governments paying more for less. Hunja (2003) has identified impediments to unilateral reform of domestic procurement: deeply vested interests and lack of political will, scarcity of technical capacity, and complexity of issues involved. Evenett (2003) notes that an alternative for improving procurement practices is in the context of an international trade agreement.

Various countries have now signed the WTO's Agreement on Government Procurement (GPA), which has been in place since 1996, to regulate public tenders in a way to guarantee the transparency of procurement procedures and to ensure equal treatment of domestic and foreign suppliers. The GPA has various provisions, not all of which are binding on WTO members:

- National treatment and non-discrimination for the suppliers of parties to the agreement with respect to procurement.
- Transparency and procedural aspects of the procurement process.
- Transparency of procurement related information.
- Accession to the agreement of further WTO members.

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

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

(Arrowsmith, 2011)

The WTO on 27th July 2001, following the normal procedure for negotiating membership, agreed to set up a working party to examine Libya's application for accession to the WTO, made in December 2001. As an applicant country, Libya has been an observer to the WTO during its membership negotiation (GPCTE, 2001 (Decision 2)); it is unclear as yet where Libya stands with its application and it cannot proceed until there is an elected government in Libya. Currently there are 40 WTO members covered by the GPA with 19 WTO members as observers under the Agreement. In addition to countries, four intergovernmental organisations also have observer status, namely the International Monetary Fund, The International Trade Centre, the Organization for Economic Co-operation and Development (OECD) and the UN Conference on Trade and Development (WTO, 2012).

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

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

(Evenett, 2003, p4)

He continues that 'how much lower' is yet to be established with confidence and comments that the GPA falls short of its potential for two reasons: firstly, that discrimination has only

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

Ssennoga (2006) argues that placing tight controls as a way to develop local industries tends to reduce local competition and customer expectations, which inevitably results in local firms either unable to achieve high levels of quality or ending up with the view that improving quality is unnecessary. Arrowsmith (2011) mentions that, in the past year or so, the importance of the GPA as an element of the WTO system has been reinforced by developments related to the economic crisis and related stimulus measures. Together with the current emphasis on infrastructure spending as an element of economic stimulus, there has a worldwide trend towards the introduction of 'buy national' policies in public procurement regimes to boost local economies and industry.

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

2.8 World Bank Public Procurement System

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

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

(Garcia, 2009)

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

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

1. Guidelines which have been drafted on the basis of three fundamental principles; non-discrimination, equity and transparency.
2. Standard bidding documents; a standard set of mandatory template documents including standard model contract conditions.

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

Procurement guidelines are divided into two main groups:

1. Goods, works and simple services (not intellectual services) are governed by the red guidelines.
2. Intellectual services are governed by the green guidelines.

2.8.1 Red Guidelines

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

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

(Garcia, 2009)

Methods

Borrowing states are to select the most suitable method for the specific procurement. In most cases international competitive bidding is the most appropriate method (unless there are provisions for domestic preference where appropriate):

1. Limited international bidding is the competitive bidding procedure normally used for public procurement in the country of the borrower and may be appropriate in procuring goods or works which, by their scope, are unlikely to attract foreign competition.
2. Shopping is a procurement method based on comparing price quotations obtained from several suppliers with the minimum number of three, to assure competitive prices. It is an appropriate method for procuring readily available, off the shelf goods, standard specification commodities or civil works of small value.
3. Direct contracting is contracting without competition and may be used in the following circumstances:

- a. An existing contract for goods or works, awarded in accordance with procedures acceptable to the World Bank, may be extended to additional goods or works of a similar nature. The bank must be satisfied in such cases that no advantage could be obtained by further competition and that the prices on the extended contract are reasonable; if considered likely, provisions for extension should be included and mentioned in the original contracting documents.
- b. Standardisation of equipment or spare parts, for the purpose of achieving compatibility with existing equipment, may justify additional purchases from the original supplier; for this to be justified, the original equipment must be suitable, the number of new items should generally be lower than the existing number, the price must be reasonable, and the possible advantages of another make or source of equipment must have been considered and rejected on grounds acceptable to the Bank.
- c. The required equipment is proprietary and obtainable only from one source.
- d. The contractor responsible for a design process requires the purchase of critical items from a particular supplier as a condition of a performance guarantee.
- e. An exceptional case has arisen such as in response to a natural disaster.
- f. The bank requires that, after a contract is signed between a borrower entity and a supplier, the borrower must publish the name of the supplier, price, duration and summary scope of the contract in United Nations Development Business online.

(Garcia, 2009)

2.8.2 Green Guidelines

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

1. The need for high quality services;
2. The need for economy and efficiency;
3. The need to give all qualified consultants an opportunity to compete in providing the services financed by the Bank;
4. The Bank's interest in encouraging the development and use of national consultants in its developing member countries; and
5. The need for transparency in the selection process.

(Garcia, 2009)

Methods

1. Quality and cost-based selection: uses a competitive process among shortlisted firms. It takes into consideration the quality of a proposal and the cost of the services in the selection of the successful firm. Cost as a factor or selection must be used with caution. The relative weight given to the quality and cost will be determined in each case, according to the nature of the assignment. The selection process must include several steps which are developed in the guidelines:
 - a. Preparation of terms of reference;
 - b. Preparation of cost estimate and budget;
 - c. Advertising;
 - d. Preparation of the shortlist of consultants;
 - e. Preparation and issuance of the request for proposals;
 - f. Receipt of proposals;
 - g. Evaluation of technical proposals and consideration of quality;
 - h. Public opening of financial proposals;
 - i. Evaluation of financial proposals;
 - j. Final evaluation of quality and costs; and
 - k. Negotiations and award of the contract to the selected firm.
2. Quality based selection: is reserved for assignments which are complex or highly specialised, for which it proves difficult to draft Terms of Reference, and where the client expects the consultants to demonstrate innovation in their proposal.
3. Selection under a fixed budget: this is reserved for situations where the assignment is simple and can be well-defined for a fixed budget. The Request for Proposal must indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes.
4. Least cost selection: applies to assignments which are routine in nature, where well established practices and standards exist.
5. Selection based on the consultants' qualifications: used for smaller assignments for which the need for preparing and evaluating competitive proposals is not justified.
6. Single source selection: where consultants can be used in exceptional cases and in the context of the overall interest to the client and the project.

(Garcia, 2009)

2.8.3 The Standard Bidding Document System

The World Bank has also developed three main sets of standard bidding documents which standardise and facilitate the process of preparation and evaluation of the bids, as well as contract performance. Along with the guidelines, this allows for a robust and perhaps failsafe procurement regime.

This turnkey process provided to the borrowing state facilitates the evaluation and control mechanisms. The detail and complexity of these documents may vary with the size and nature of the proposed bid package and contract, but generally include:

1. Invitation to bid;
2. Instruction to bidders;
3. Form of bid;
4. Form of contract;
5. Conditions of contract;
6. Specifications and drawings;
7. Relevant technical data;
8. Lists of goods or bill of quantities;
9. Delivery time or schedule of completion; and
10. Necessary appendices, such as formats for various securities.

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

2.9 Methods of State Public Procurement Policy Assessments

It is impossible, argues Schapper et al. (2006), to develop a comprehensive framework for the understanding, analysis or management of public procurement, which is independent of its political context. Gillbert (2008) questions the notion of best practice, stating that best practice is looked at as being the best in the specific field. Systems and processes that are clearly defined, achievable and put in place will provide an overall procurement process that is fit for an organisation's requirements. He highlights some example definitions but states

that it is important to realise that 'one size fits all' does not work well, and that situations differ, especially in developing countries due to lack of infrastructure and the ability to put in place and carry out procurement practices at all, let alone implementing best practice.

Some example definitions of best practice could be:

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

(Gillbert, 2008)

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

- Increased number of players created by the decentralisation of governments.
- Demand for transparency.
- Trade and investment.

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

- Political and managerial will;
- Enactment and enforcement of procurement laws and regulations;
- Transparent and accountable bidding processes;
- Institutional improvements;
- Enhancement of professional skills;

- Standard procurement approaches; and
- Ethical codes/integrity pacts.

(Callendar, 2007)

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

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

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

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

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

The Legal and Regulatory Framework Defining Libya's Public Procurement Regime system was based on the Declaration of the People's Authority (1977). The declaration is based on the many theories of Col. Gaddafi's Green Book and the Third Universal Theory. This has now changed and Libya is going through its democratisation phase of transition from Col. Gaddafi's system of governance, perhaps towards a more traditional type of governance structure. The primary instrument in regulating public procurement is the Administrative Contracts Regulation, or ACR (2006). The ACR's scope encompasses all procurement made by a public body, being goods, services and works but excludes the military, the National Oil Company and various institutions that are integral to the Gaddafi regime, e.g., Green Book Centre, The Revolutionary Guard and the various Security Agencies. There are also various other laws and decisions which impact public procurement, these include the Commercial Law, Labour Law, Customs Law, and the Criminal Law which include provisions on corruption and misconduct of public funds.

During the research, the author obtained a copy of a policy update intent of the ACR that was presented to the General People's Congress in 2010; Although it was not an exhaustive document, it did, however, illustrate that the National Planning Council (NPC) was indeed concerned about the current ACR validity and its effectiveness alongside the other reform programmes across the public sector in Libya at the time.

2.10 Challenges and Influences in Public Procurement

'Public procurement is one of the least understood and most vulnerable areas of public administration'

(Schapper et al., 2006, p2)

Procurement management includes an element of law, finance and accounting, risk management and politics. Where practitioners in each of the mentioned fields have a claim on public procurement as their remit (Schapper et al., 2006), a lack of consensus can be found worldwide in procurement governance. Thai (2001) notes that there are five challenges in public procurement. Firstly, how to efficiently manage the sheer magnitude of procurement outlay, which has a great impact on the economy. Secondly, the challenge of achieving economic, social and other objectives through public procurement. Thirdly, due to much scrutiny of taxpayers and competing vendors, public procurement has been perceived as an area of waste and corruption and overcoming this negative perception is one of the biggest

challenges in public procurement. Fourthly, as many countries have now moved to a regional or international economy, public procurement faces the challenge of how to comply with their government's procurement regulations and social and economic procurement goals without violating any trade agreements, regional or international. An example is the question of how to comply with a national economic policy of nurturing local firms whilst not treating foreign firms unfairly as provided for in WTO agreements or other regional agreements. Finally, in both developing and developed countries, a sound procurement system has to accomplish two sets of requirements: management requirements and policy requirements, with procurement policy requirements normally having economic goals such as preferring domestic produce and firms, and social goals such as assisting minority-owned businesses; this barrier makes it very difficult for policymakers to make an optimal decision, as there will always be trade-offs.

Thai (2001) developed a model depicting the scope of public procurement, which consists of five elements: policymaking and management; authorisation and appropriations; procurement regulations, and procurement functions in operations. He further mentions that the ability to accomplish procurement objectives and policies is influenced by internal factors as listed below and illustrated in Figure 2.2:

- Interaction between various elements of the procurement systems.
- Types of goods, services and capital access required.
- Professionalism of procurement workforce.
- Staffing levels (i.e., ratio of procurement practitioners to contract actions).
- Procurement organisational structure such as the issue of centralisation vs. decentralisation.
- Procurement regulations and guidelines.
- Internal control and legislative oversight.

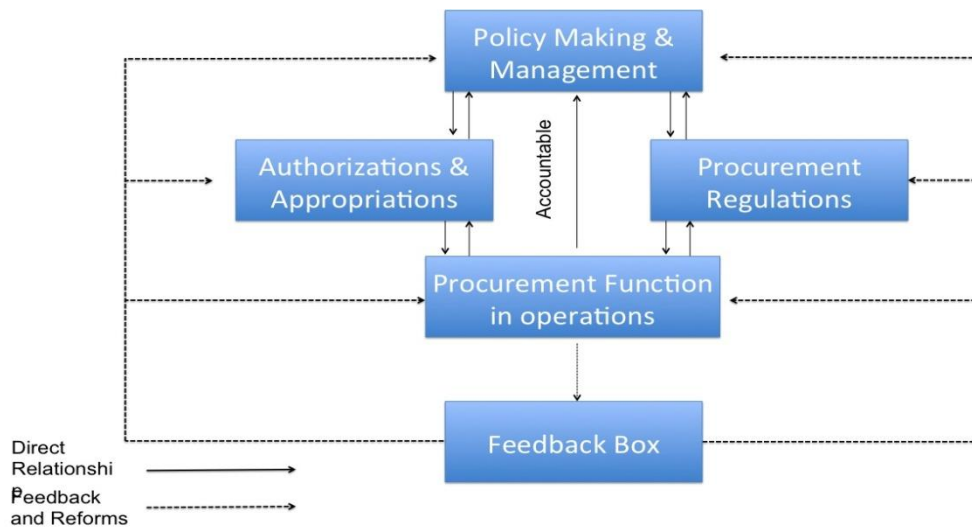


Figure 2.2: Public Procurement System (Thai, 2001)

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

As mentioned previously in this chapter, the decision to adhere to trade agreements whilst maintaining national policies is challenging; market conditions have a great influence on public procurement efforts to maximise competition, as there are varying levels of economic growth amongst the various states of the world, market conditions are favourable in industrialised countries, not so favourable in developing countries (Thai, 2001).

The legal environment, as mentioned by Thai (2001), is also considered as an external factor that influences public procurement; apart from public procurement regulations, the legal environment refers to a broader legal framework of any given country that governs all business activities, these vary from financial, environmental and marketing laws which have an effect on the market environment of a country. Thai (2001) mentions that this is an influencing factor particularly in developing countries, or those in transition, where legal systems are not comprehensive. This is particularly true for the case of Libya; the current procurement regulations in place today are those from the previous regime and, although many of the laws from the previous regime that were intrinsic to it have been abolished, most laws were based on Law No. 1 of the People’s Declaration as a basis of legislation which has now been abolished.

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

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

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



Figure 2.3: The Procurement Management Framework (Schapper et al., 2006)

Each of these elements, argues Schapper (2006), has varying regimes and is likely to be associated with the centralisation/decentralisation conflict that is often evident in procurement reforms in particular:

- Strategic management will be consistent with the centralisation of contract design and documentation, specification and evaluation, and the regulation of process (central agencies).
- Performance management will be consistent with the decentralisation of contract specification, evaluation and regulation, but the centralisation of contract value. (operational organisations/public works).
- Process management will be consistent with the devolution of contract processes (shopping/smaller organisations).

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

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

'caution must be employed by purchasers, however, as their activities are masked at times from public accountability'

(Matthews 2005, p397)

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

'pushing around enormous amounts of money, without specialised education'

(Callender as cited by Matthews 2005, p390)

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

With the public procurement function being the one most prone to corruption (Thai, 2008), transparency and accountability ought to be key cornerstones of public procurement. This is particularly true in developing countries (Thai, 2008) where there is insufficient transparency and competition in the procurement process. Daniel Kaufman (2005) of the World Bank estimates that more than US\$1 trillion is paid annually in bribes (Thai, 2004). With 25% of Africa's GDP estimated to be lost every year to corruption (Thachuk, 2005 as cited by Estach & Limi, 2011), it is also clearly a major factor that influences procurement policy development. Garcia (2009) explains that public procurement raises many complex problems, beginning with unclear and opaque rules, which are the product of poor public policies, and the corruption and inefficiency caused by outdated practices. Garcia (2009) mentions that

public procurement faces many challenges, some of them practical which threaten competition, transparency and equality of treatment, and some of them shadowy, such as dealing with cartels and the fight against corruption.

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

Investigating the determinants of wages and levels of compensation is essential to the development of fair and competitive wage systems. There are many studies that deal with different drivers of wage determination. However, most of these studies deal with the private sector, and are often associated with stock performance and profits collected by firms. Such studies rarely deal with the public sector (Alkadry, 2004).

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

The situation today has not changed since that time; at the dawn of the third millennium, the issue of corruption seems more prevalent than ever before. Corruption might be difficult to define precisely, argues Gelleri (2004), nevertheless it is a damaging phenomenon, which has riddled countries such as Libya over the past 40 years and continues to do so to this day. Surveys, such as that carried out by Transparency International, reveal that there are hardly any nations untouched (Gelleri, 2004).

As mentioned, the phenomenon of corruption has existed over the ages and is well documented in all civilisations ever since ancient times. Attention during the Arab Spring was focused on the endemic corruption, which had caused decade-long dictatorships to fall. The impact of the flood of media accusations of corruption at the highest levels in government, including presidents and prime ministers of countries, contributed to corruption

appearing as one of the problems of most concern to citizens and confirmed that a weakness in institutions can go so far as to destabilise an entire region (Aniaz, 2006). As Gelleri mentions, this is not unique to developing nations; examples of this have been uncovered in the Enron case in the US; in South Korea, where President Roh Tae Woo was seen to be implicated in bribery in connection with the purchase of aircraft; and in Singapore, where several multinational firms and a senior official of the Public Utility Board were involved in a series of payments made to receive confidential information on tenders (Aniaz, 2006). In Germany, France also experienced a scandal of a similar scale in which high-ranking politicians were put on trial in the Elf-Aquitaine affair. In Spain, the Roldán case was one of the corruption trials to receive exposure in the western media (Aniaz, 2006). In Greece, which faces its worst economic crisis in modern history, contractors of public procurement sometimes seek to enhance their political leverage in order to strengthen their business prospects. Owners of construction companies also became major shareholders in media companies and, as a result, fears arose during the late 1990s that the power of the media might influence decisions regarding public contractors, and that media power was too concentrated in a handful of powerful organisations. This led to the introduction of legislation which was revised of the Constitution in 2001 which stipulated that owners, partners, main shareholders or senior executives (or their next of kin) of media companies cannot be owners, partners, main shareholders or senior executives of companies engaged in public procurement projects.

'The harmonisation of Greek procurement rules with those of the EU has been a long and difficult process; although it has gradually progressed towards full compliance this, however applies in theory and not necessarily in practice'

(Garcia, 2009)

Any assessment of levels of corruption is a challenging task; nevertheless, since 1995, the Corruption Perceptions Index compiled by Transparency International has established itself as a robust measurement tool to that effect. The index ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians, and is drawn up on the basis of surveys conducted by independent entities in each country among business people, analysts and the general public (Aniaz, 2006). According to this index, Libya ranks as 160 out of the 174 countries in the Index as illustrated in Figure 2.4 (Transparency International, 2012).

157	Tajikistan	22
160	Democratic Republic of the Congo	21
160	Laos	21
160	Libya	21
163	Equatorial Guinea	20
163	Zimbabwe	20
165	Burundi	19
165	Chad	19
165	Haiti	19
165	Venezuela	19
169	Iraq	18
170	Turkmenistan	17
170	Uzbekistan	17
172	Myanmar	15
173	Sudan	13
174	Afghanistan	8
174	Korea (North)	8
174	Somalia	8

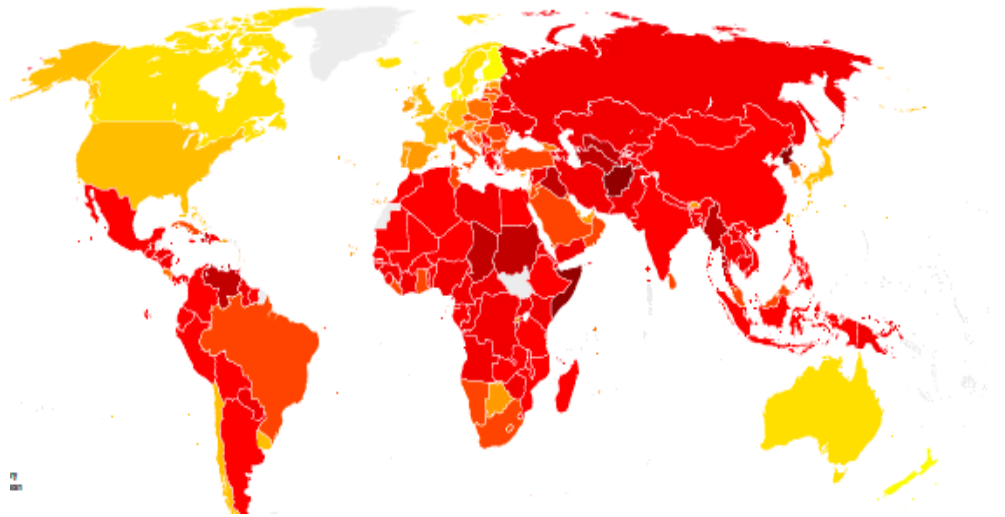


Figure 2.4: Corruption Perception Index (Transparency International, 2012)

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

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

The first initiative is that of the UN's effort to combat corruption around the world. In December 2000, the UN General Assembly passed Resolution 55/61, which called for an international legal instrument against corruption (Yukins, 2006). The UN Convention on Corruption was adopted by the UN General Assembly on 31st October 2003, and was opened for signature. The UN Convention Against Corruption is the first truly global agreement against corruption (Yukins, 2006). As of mid-2006, 140 countries had signed the Convention, of which 60 countries had ratified or acceded to the Convention. Libya is not yet one of those countries.

3.0 Context Overview

3.1 Background

The context of this research is the public sector in Libya. This chapter will illustrate the key characteristics of the public sector in Libya, and the unique governance structures and mechanisms that have been in place over the past four decades. This chapter will also highlight the recent changes that have emerged in Libya during this research.

Libya, once known as The Great Socialist People’s Libyan Arab Jamahiriya, is located in North Africa bordering Algeria, Chad, Egypt, Niger, Tunisia and Sudan, with a Mediterranean coastline of 1,800 kilometres. Its climate is pleasant along the coast but dry and extreme in the desert interior. More than 90% of the country is desert or semi-desert terrain – Figure 3.1 illustrates the location of the country. The latest census statistics indicate that the current estimated population is 6,173,579 with a low median age of approximately 24 years (National Statistics and Authentication Board, 2006). Ethnic groups include Berbers, Arabs, Italians, Greeks, Maltese, Turks and Egyptians, with the majority being Berbers and Arabs. Languages spoken are Arabic, Italian and English.



Figure 3.1: Map of Libya (<https://www.uktradeinvest.gov.uk>)

3.2 History

Historically, Libya has mostly been subject to foreign control. The Phoenicians, Carthaginians, Greeks, Romans, Vandals and Byzantines all ruled either all or parts of Libya at some stage.

During the Islamic Futuhat, i.e., the spread of Islam in seventh century AD, the Arabs conquered Libya. Over the following centuries, most people in Libya then adopted Islam and the Arabic language and culture. The Ottoman Turks conquered the area in the 16th century. The three provinces of Cyrenaica, Tripolitania and Fezzan (where the name Tripoli is derived from the Greek word *tripolis*, meaning Three Cities) were all under Ottoman rule. The Italians then invaded Libya in 1911 and in 1934 Italy adopted the name 'Libya' as the official name of the colony. From 1945 to 1951, Tripolitania and Cyrenaica were under British administration; the French controlled Fezzan. Under the terms of the 1947 peace treaty with the Allies, Italy relinquished all claims to Libya.

The establishment of Libya as a sovereign state was made possible through some shrewd 'politicking' between the Senussi family and the British government, a relationship that had been cemented through decades of influence and common interests, manifested by Egyptian trade and cultural influence over the eastern region of Libya known as Cyrenaica (Ahmida, 2005).

On the 21st November 1949, the United Nations (UN) General Assembly passed a resolution stating that Libya should become an independent state before 1st January 1952. When Libya declared its independence on 24th December 1951, it was the first country to achieve independence through the UN. The UN then assisted the Libyan authorities in drafting a first constitution and oversaw the first elections in Libya. In 2012, 60 years after this event, the UN again assisted Libya with its second round of elections and is assisting the Libyan authorities in drafting its constitution.

In 1951, Libya was proclaimed a constitutional and hereditary monarchy under the then King Idris Senussi. The discovery of significant oil reserves in 1959 and the subsequent income from petroleum sales enabled what had been one of the world's poorest countries to become an extremely wealthy country. King Idris ruled the Kingdom of Libya until he was overthrown in a military-led coup on 1st September 1969. The new regime, headed by the Revolutionary Command Council (RCC), abolished the monarchy and proclaimed the new

Libyan Arab Republic. Colonel Muammar Gaddafi emerged as leader of the RCC and eventually as the de facto head of state (Vanderwalle, 1998).

Starting in 1973, oil revenues enabled a decade of political and economic experimentation in Libya (Vanderwalle, 1998). The sudden capital inflows caused Libya to engage in an unrestrained spending spree in an effort to maintain relationships with the groups that the new regime considered as its main supporters and allies. It made major outlays through a flexible and unrestrained program of welfare measures, military purchases and government contracts. This, however, came to an end, and the massive cash inflows slowed. The country's oil revenues were reduced from US\$21 billion to US\$5 billion between 1981 to 1986, forcing Libya to consider new economic strategies in sustainable macroeconomic policies and to reconsider its traditional distributive largesse (Vanderwalle, 1998).

3.2.1 The 1969 Revolution

Col. Gaddafi's ability to sustain his influence was embedded in his ability to articulate a message that combined a strong anti-colonial rhetoric with strong support for Pan-Arab nationalism. Col. Gaddafi translated these legacies into a revolutionary ideology, using colloquial language to reflect his Bedouin background and his revolt against the bourgeoisie social class that had started to plague the monarchy. Effectively, Col. Gaddafi's revolution was celebrated as a class revolution of the lower and middle class against the corrupt bourgeois (Ahmida, 2005).

Col. Gaddafi developed his power base by firstly quickly establishing a main core message to the Libyan population that revolved around a strong rural ideology of statelessness and fear of an urban-centred state (perceived as a colonial state). To cement this, Col. Gaddafi pursued a policy of destroying institutions that resembled the Senussi monarchy. Col. Gaddafi's second key pillar of legitimacy stemmed from his anti-colonial rhetoric; to establish this, Col. Gaddafi quickly moved to annul treaties with the US and UK that allowed for their military bases to be present in Tripoli and Benghazi and, by mid-1970 (only nine months into his reign), both bases were evacuated. Thirdly, Col. Gaddafi understood that oil revenue was key to his regime's survival and, under the banner of enhancing national sovereignty and pride, he moved by early 1971 to quickly nationalise all key oil company production operations in Libya.

The leadership of Col. Gaddafi's revolution was formed by the 12 member RCC and, within a few months, he was the de facto sole leader of the revolution. His authority was seldom confronted; this manifested itself when the Committee issued a decree on the 8th January 1970 stating that Col. Muammar Gaddafi, as the head of the Committee could 'represent' the Committee on all policy affairs and that his signature effectively represented the signature of all Committee members.

In formulating the power structure of the regime, some clear legislative measures were taken; the first was the annulment of the existing Libyan constitution and replacing it with a constitutional declaration in September 1969. Through this declaration the RCC assumed all legislative and executive powers for the interim period until the restructuring of state institutions.

In this initial period of the formation of the regime, Col. Gaddafi himself assumed official positions. In addition to being appointed as the head of the RCC, Col. Gaddafi assumed the position of Prime Minister from 13th September 1970 until 6th April 1972. In recognising the importance of the military Col. Gaddafi was appointed as Commander in Chief of the Armed Forces, the only title and position that he retained throughout his reign.

3.3 The Third Universal Theory

It was 510 BC when the Athenians invented the governance practice of *demokratia* from which the term democracy is derived and is defined as 'rule by the people'. All citizens had the right to attend an assembly held more than 40 times a year. The assembly made major decisions and every citizen could speak and vote. Therefore, each citizen could directly affect the decision-making process, hence this democratic governance of the state was known as direct democracy. This system laid the foundations of later democracies as we know them today. One country which, in theory, practices direct democracy as the Athenians did in 510 BC, was Libya.

On the 2nd March 1977, Col. Gaddafi formally launched his new political system. Libya was now renamed as the Socialist Arab Libyan Jamahirya. This new system was the formal adoption of the People's Committees as the key source of political legitimacy, and Col. Gaddafi maintained that, from this date onwards, he did not retain any formal political position.

The first of three full chapters of the Green Book that Col. Gaddafi claimed to have authored in 1975, was formally published in March 1977, and the new ideas of Col. Gaddafi's philosophy were to be put into practice. Most of these ideas and principles were very much enshrined in the socialist revolutionary ideology that Col. Gaddafi had been nurturing during the first years of his revolution.

'Political systems in the world today are the result of the struggle for power between instruments of governing. The struggle may be peaceful or armed, such as the conflict of classes, sects, tribes, parties or individuals. The result is always the victory of an instrument of governing - be it an individual, group, party or class and the defeat of the people, i.e., the defeat of genuine democracy'

(Gaddafi, 1979, p5)

Col. Gaddafi's Green Book argues that a political struggle or race that results in the victory of a candidate with 51% of the vote leads to a dictatorial governing body over the 49% of the electorate that did not vote for that particular candidate. Based on this ideology, the Third Universal Theory was established and used as the basis for governance in Libya.

The public administration, known in Libya as the 'Popular Administration', is part of the administrative theory of Col. Gaddafi's Jamahiriya system, and instructs Libya to apply principles of direct democracy and citizen participation in the administrative functions of government. The Popular Administration system is considered to be the executive interpretation of the concept of direct rule by the people introduced by the political Jamahiriya Theory, where democracy means 'popular rule' rather than 'popular expression' (Ghiryani, 2004).

This direct democracy approach of governance, or the People's Authority as it became known, became the foundation of the political system in Libya, practiced by the people through People's Congresses and People's Committees at the local and regional levels, and through General People's Congress and General People's Committee and its various secretariats at the national level – Figure 3.2 illustrates the structure.

In theory, the political and administrative structures of the state were set out to be in conformity with the theoretical foundations of the Third Universal Theory as set by the Green Book.

The Green Book clearly represented a turning point for Libya and was the guide for the political and economic system for Libya for over three decades.

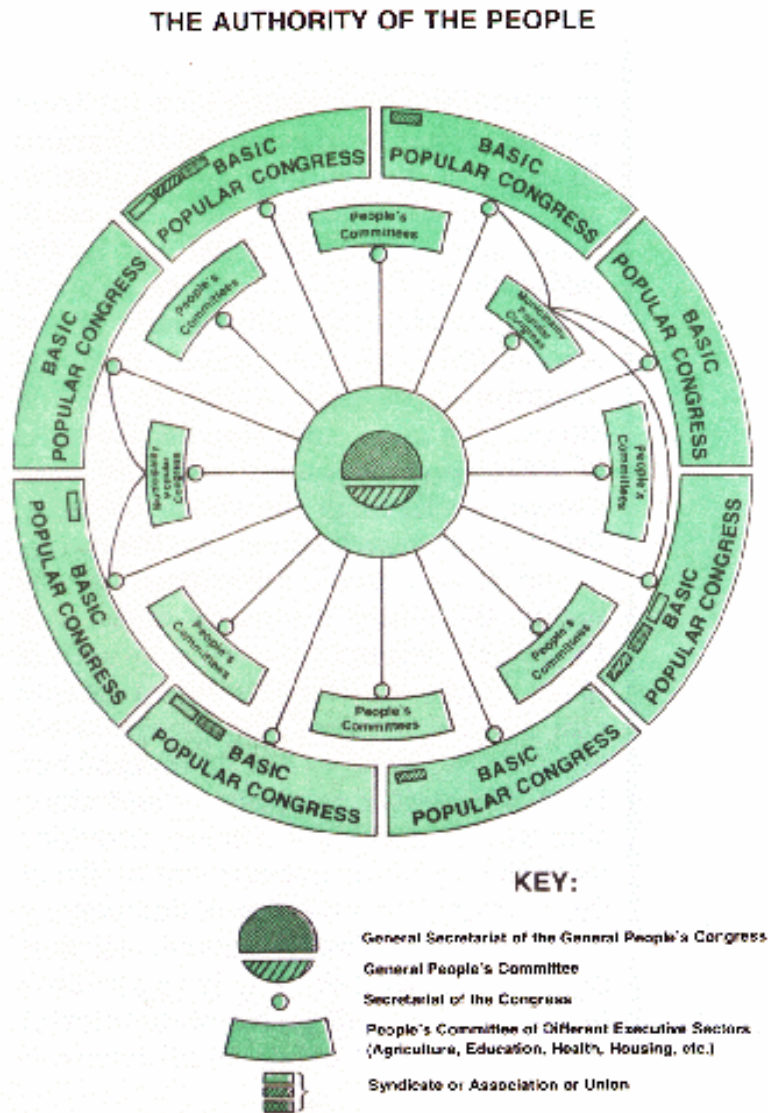


Figure 3.2: The Authority of the People (Gaddafi, 1979)

The citizens (or the people or the masses as the Green Book describes them) are initially divided into Basic People's Congresses (BP Congresses); these are local branches of the legislative branch of government. Each BP Congress chooses its secretariat. The secretariats together form People's Congresses or the regional legislative branch of government. The BP Congresses then choose administrative People's Committees to act as the government's administration; these could be described as the civil servants or public servants. Thus all public utilities are run by People's Committees which are responsible to the BP Congresses.

These in turn develop policy to be carried out or executed by the People's Committees so, in theory, making both administration and supervision 'popular' or by the people. Figure 3.3 outlines this structure. This system creates the definition of democracy, which is 'the supervision of the people by people' (Gaddafi, 1979).

The Green Book illustrates Col. Gaddafi's ideology of statelessness and of people managing their own affairs with the absence of state institutions, hence this system of direct democracy (direct representation without intermediaries). The organs and institutions of the Jamahiriya system would fluctuate over the decades in reaction to domestic political pressures; local government boundaries and authorities would change and the nature of the power system would continuously be altered partially to serve the purpose of creating a constantly fluid system to maintain Col. Gaddafi's influence over the real source of political power (the oil revenues).

However the main skeleton of the system was almost consistent and contained the following elements:

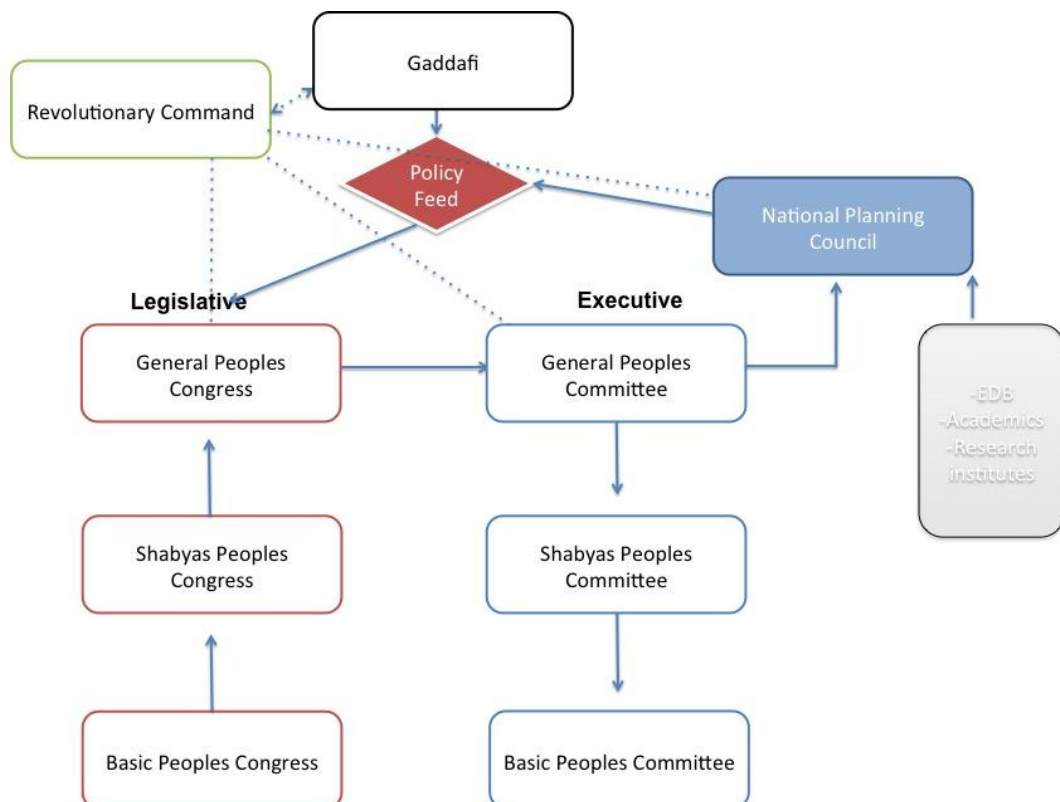


Figure 3.3: Governance Structure Libya 1979-2011

As observed in Figure 3.3, an important central and independent organisation in relation to the GOL is the National Planning Council (NPC). As stipulated by Law No. 13 (2005) the Council’s mission statement is to determine social, economic objectives and policies, review projects and priorities, and propose legislation necessary in executing the socio-economic plans and policies (Law No. 13, 2005). The NPC has wide representation from across the governance spectrum; Law No. 13 (2005) states that members of the Council include the Secretary Generals of the General People’s Committee (Prime Minister) and the Secretary Generals of the Sectoral General People’s Committees (Ministers), university deans and research institutions such as the Green Book Centre – Figures 3.4 to 3.6 illustrate the governance structure of both the legislative and executive branches of government.

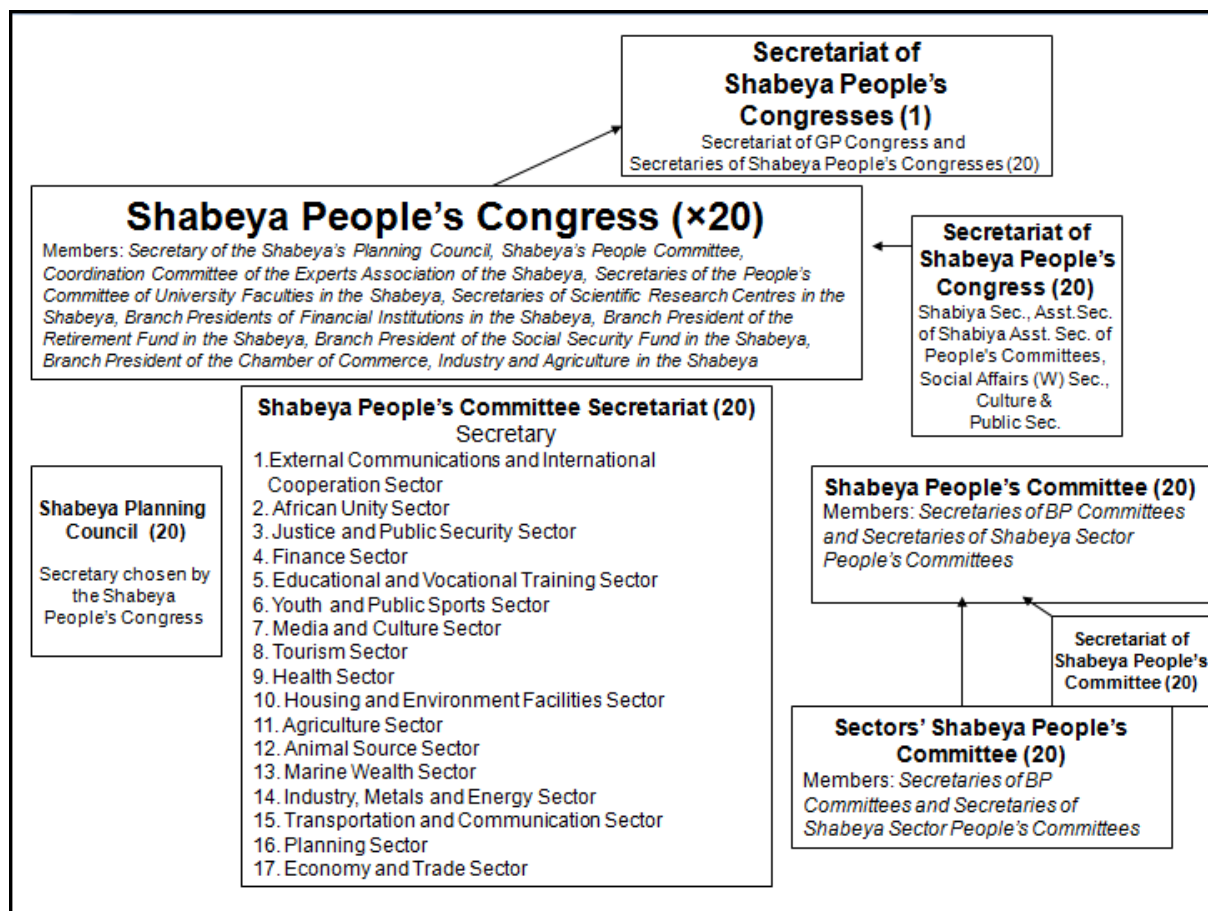


Figure 3.4: Shabeya People’s Congress

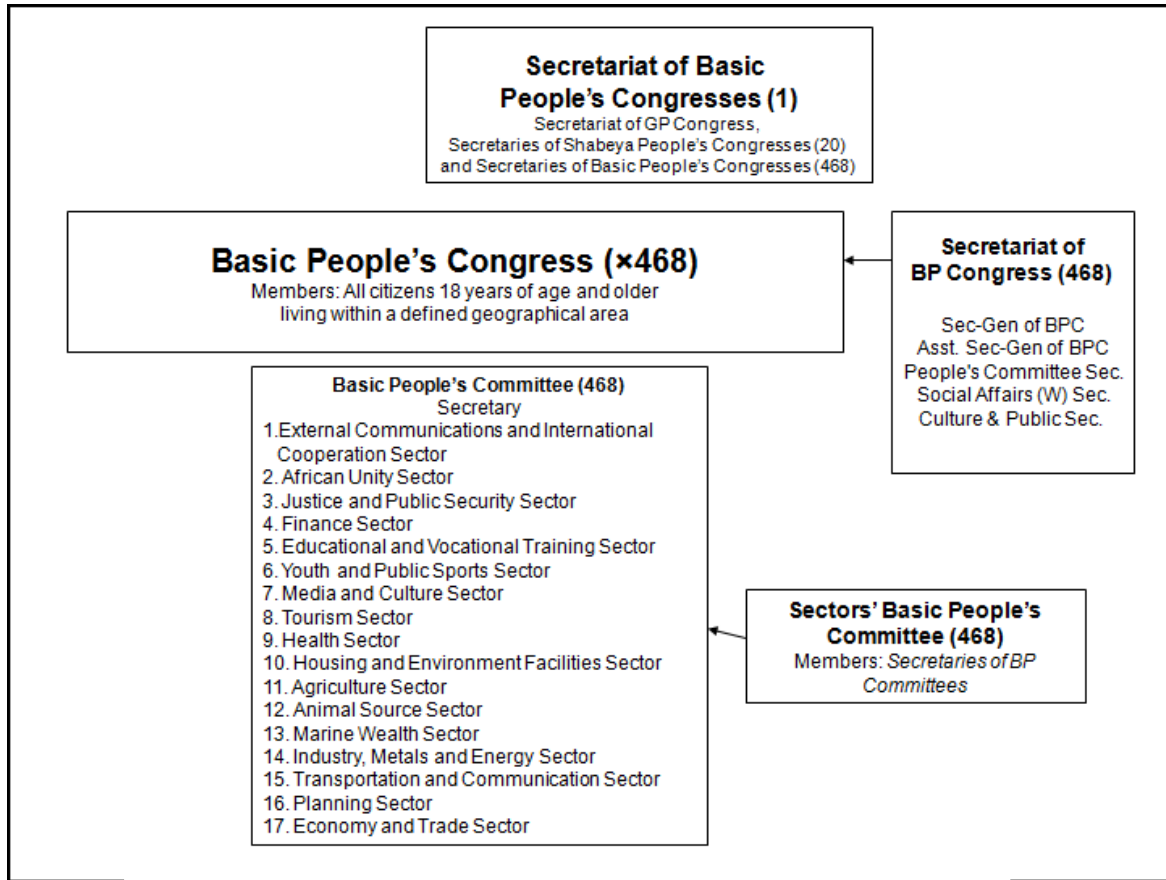


Figure 3.5: Basic People's Congress

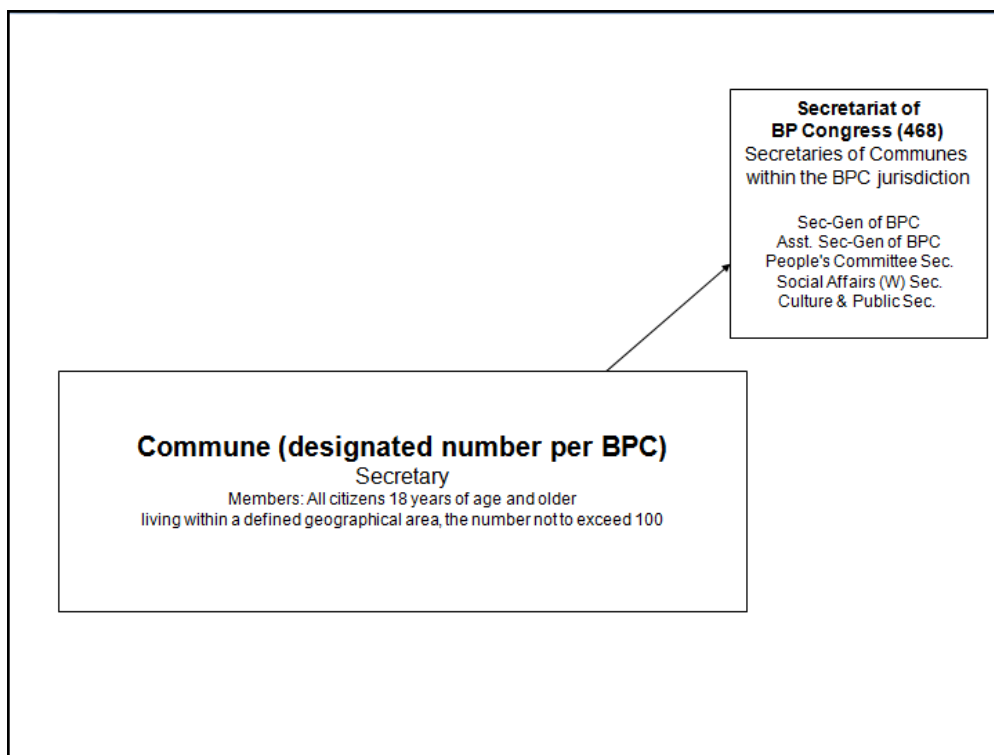


Figure 3.6: Commune

3.3.1 General People's Congress

- The **General People's Congress**, or GP Congress, is the legislative forum which interacts with the General People's Committees (GP Committees), serving as the intermediary between the masses and the leadership. Its membership includes the secretaries of the People's Congresses, People's Committees and Sectoral People's Committees. Its responsibilities include formulating laws and decisions issued by the Basic People's Congresses (BP Congresses), selecting the Secretariat of GP Congress, determining the sectors to be managed by the GP Committees and selecting the Secretary of the NPC and the Secretariat of the GP Committee. (GPCMET 2009)
- **General People's Congress Secretariat** is elected by the GP Congress and provides administrative support to Congress (i.e., organises sessions, draws up agenda and executes its resolutions and recommendations), follows up implementation of laws and decisions issued by the BP Congresses, follows up work of the People's Committees, issues decisions related to the foundation of People's Congresses in coordination with the Secretariat of the GP Committee, reviews draft laws for submission to the Basic People's Committees (BP Committees), reviews and interprets laws and regulations, refers issues to the GP Committee for Inspection and People Supervision and issues executive regulations (Article 27 of Law No.). The GP Congress Secretariat consists of: (1) GP Congress General Secretary; (2) Assistant Secretary for the Popular Conferences Affairs; (3) Assistant Secretary for the People's Committees Affairs; (4) Secretary for the Vocational Federations, Associations and Leagues Affairs; (5) Social Affairs Secretary; (6) Environment, Resources and Construction Planning Secretary; (7) Legal Affairs and Human Rights Secretary; (8) Cultural Affairs and Public Mobilisation Secretary, and (9) External Affairs Secretary. (GPCMET 2009)
- **Sectoral General People's Committee.** Each of the 17 sectors at the national level is managed by a Sectoral GP Committee comprising Secretaries of the Sectoral People's Committees of the People's Congresses and headed by a Secretary (Minister) and Assistant Secretary who are elected from the GP Congress. Among the Sectoral GP Committee's responsibilities are

implementing and managing projects and services serving more than one Shabeya, proposing executive plans for BP Congress decisions, carrying out studies related to sector activities, proposing administrative and transformation budgets for the sector, and preparing draft legislation related to the sectors and referring these to the Secretariat of the GP Committee for study and submission to the GP Committee. (GPCMET 2009)

- **The Sectoral General People’s Committee Secretariat** is formed of an elected Secretary and Secretaries of the Sectoral GP Committees of the Shabeyat. It is responsible for coordinating implementation of the Committees’ decisions. (GPCMET 2009)

- **General People’s Committee and the General People’s Committee of the Shabeyat.** The GP Committee is formed of secretaries of BP Committees, Shabeya People’s Committees and Sectoral GP Committees, and is headed by a Secretary and his Deputy who are elected by GP Congress. The GP Committee is responsible for implementing laws and the decisions of the BP Congresses as formulated by GP Congress, proposing and developing administration and transformation budget projects and referring these to the NPC, proposing draft laws for submission to the BP Congresses, implementing and managing public strategic projects, supervising the work of the Sectoral GP Committees, deciding on the organisational structure of Sectoral GP Committees and issuing executive regulations providing for the competences of the GP Committee. The GP Committee meets at least twice a year; before and after the GP Congress meeting (Article 34 of Law No. 1).

- The **General People’s Committee Secretariat** meets at least twice monthly and is formed of the GP Committee Secretary, Deputy Secretary and Secretaries of Sectoral GP Committees. It is responsible for overseeing the work of Secretaries of the GP Committees, Shabeya People’s Committees and People’s Committees of authorities, corporations and departments. Like the GP Committee, the Secretariat can also implement laws and decisions issued by the BP Committees and formulated by GP Congress and propose draft laws for submission to the BP Congresses.

- The **General People’s Committee of the Shabeyat** meets quarterly and is formed of the Secretary and Deputy Secretary of the GP Committee and Secretaries of Sectoral GP Committees and Shabeya People’s Committees. The Committee is responsible for implementing laws and decisions of the BP Committees and formulated by the GP Congress (as the GP Committee and GP Committee Secretariat does), monitoring Shabeya People’s Committees, coordinating issues of joint concern between Shabeyat and coordinating between Shabeyat and Sectoral GP Committees. (GPCMET 2009)
- **General People’s Committee for Inspection and People Supervision:** pursuant to Decision of GP Congress No. 6 for 2006, the GP Committee of Inspection and People Supervision was re-organised into the following authorities: (1) Administrative supervision, (2) Financial supervision, (3) Technician supervision, (4) Supervision of food and drugs, (5) General inspection, and (6) Investigation. (GPCMET 2009)
- **National Planning Council:** review board for the policy initiatives produced by the People’s Congresses and also acts as policy initiator. Membership includes the Secretary of the Council and the GP Committee and Secretaries of the Sectoral GP Committees, Shabeya Planning Councils, Shabeya People’s Committees, University People’s Committees and Research Centres. The GP Committees, Shabeya People’s Committees, other bodies and public organisations report to the Council once or twice annually indicating project expenditure and implementation progress. The Council provides technical inputs and priorities, studies and identifies objectives and policies, reviews project plans and transformation budgets, presents reports to BP Congresses and studies how to implement policy. It conducts four annual review meetings. Its mandate is described in Law No. 13 for 1430 on Planning. (GPCMET 2009)
- **Inspector Generals:** small in number, their functions are not purely inspection. The eight Inspector Generals are not members of the Secretariat of the GP Committee and do not have a policy function.
- **General Authorities:** recently abolished or merged with GP Committees. General Authorities were headed by Secretary Generals who were also

members of the GP Committee, were small in number, performed cross-cutting coordination functions but had no policy function.

3.3.2 Shabeya People's Congress

- A **Shabeya People's Congress** is comprised of a number of BP Congresses within an administrative area based on geographical location and population density. Membership in each of the 20 Shabeya People's Congresses in Libya includes the BP Congress Secretariats, the BP Committees Secretariats and secretaries of unions, syndicates and vocational associations in its jurisdiction. Executive Order 6 regulates Shabeyat work. Among its responsibilities are the selection of a Secretariat, a Shabeya People's Committee Secretary, 17 Shabeya Sector People's Committees Secretaries and a Shabeya Planning Council Secretary. The Shabeya People's Congress is also responsible for collecting decisions and recommendations of the BP Congresses in its jurisdiction and referring these to the Secretariat of the GP Congress, developing local decisions of the BP Congresses pertaining to the Shabeya and referring these to the competent GP Committee for implementation and ratifying the distribution of administrative and transformation budgets between the BP Congresses and sectors. The administrative and transformation budgets of the Shabeya People's Congress includes the budgets of the (1) BP Congresses within its jurisdiction, (2) Shabeya sectors, and (3) authorities pertaining to the Shabeya. The Secretariat of the Shabeya People's Congress, Shabeya People's Committee and Shabeya Sector People's Committees are considered one administrative unit. (GPCMET 2009)
- **Secretariat of the Shabeya People's Congress and Secretariat of the Shabeya People's Congresses.** Each Shabeya People's Congress elects a **Secretariat of the Shabeya People's Congress** from its membership which is formed of a (1) Secretary (who need not be a member of the Shabeya People's Congress), (2) Popular Conferences Affairs Assistant Secretary, (3) People's Committees Affairs Assistant Secretary, (4) Federations, Associations and Leagues Affairs Secretary, (5) Social Affairs Secretary and (6) Cultural and Public Mobilisation Affairs Secretary. The Secretariat is responsible for following up implementation of BP Congress decisions in its jurisdiction,

arranging Shabeya People's Congress meetings, determining meeting dates for the BP Congresses in its jurisdiction in coordination with the Secretariat of the GP Congress, following up Shabeya People's Committee work and coordinating with the GP Congress Secretariat on organisational issues. (GPCMET 2009)

- The **Secretariat of the Shabeya People's Congresses** is formed of the GP Congress Secretariat and Shabeya People's Congress Secretaries. It is responsible for following up implementation of BP Congress laws and decisions, following up work of the GP Committee of the Shabeyat, preparing proposals to formulate BP Congress decisions and recommendations and submitting these to BP Congresses and GP Congress, proposing draft laws and regulations and preparing financial and organisational or administrative decisions necessary for the work of the Shabeya People's Congress Secretariat and presenting these to the GP Congress Secretariat for consideration. (GPCMET 2009)
- **Sectoral Shabeya People's Committee and Shabeya People's Committee.** The **Sectoral Shabeya People's Committee** comprises Secretaries of BP Congress Sector Committees within its jurisdiction and a 'head' Secretary elected by the Shabeya People's Congress. The individual Sectoral Shabeya People's Committees are responsible for implementing BP Congress decisions which extend beyond the framework of a single BP Congress, supervising work of the BP Congress Sector Committees, implementing sector-specific Shabeya People's Committee decisions and proposing sectoral plans and programmes that are referred to meetings of the Shabeya People's Congress for discussion. The Sectoral Shabeya People's Committee is supervised by the Shabeya People's Committee. (GPCMET 2009)
- Each of the 20 Shabeyas features a **Shabeya People's Committee** headed by an elected Secretary (NB the position of Secretary of the Shabeya People's Committees is said to have been eliminated but the researcher has not seen a decision confirming this) and formed of Secretaries of BP Committees and Sectoral Shabeya People's Committees. The Shabeya People's Committee's responsibilities include implementing decisions of the BP Congresses, GP

Committee, GP Committee of the Shabeyat and Sectoral GP Committees, service delivery in the Shabeya's jurisdiction, proposing transformation plans, annual and administrative budgets to the Shabeya Planning Council, issuing executive decisions for distribution of its budget between BP Congresses, sectors and Shabeya projects and transferring allocations between different items of the budget, between different BP Congresses or from one sector to another and deciding on issues that are not within the competence of the BP Committees (Article 18 of Law No. 1).

- The Shabeya People's Committee **Secretariat** is formed of its Secretary and Secretaries of Sectoral GP Committees to coordinate the implementation of Shabeya People's Committee decisions. (GPCMET 2009)
- The **Shabeya Planning Council** is comprised of the Secretary of the Council, the Shabeya People's Committee and Secretaries and Presidents of Universities, Financial Institutions and Research Centres in the Shabeya. The Council reports to the Shabeya People's Committee on transformation budgets and project plans in the Shabeya. The Council is responsible for project research, prioritising implementation of Shabeya projects, identifying available resources, developing policy initiatives and presenting reports and providing recommendations to the NPC on Shabeya transformation projects. Established under Law No. 13 of the Year 1430 on Planning. (GPCMET 2009)

3.3.3 Basic People's Congress

- There are 468 **Basic People's Congresses**, or BP Congresses, in Libya. Their administrative borders are determined by a coordinated decision of the Secretariats of GP Congress and GP Committee. The BP Congress is responsible for approval of laws and policy decisions. In principle, BP Congresses initiate policy and legislation but they generally vote on policy issues generated from the GP Committee and GP Congress and 'laws and decisions' issued by the BP Congresses are not effective before being formulated and recited at the GP Congress (unless they are local in nature). BP Congress meetings are determined by GP Congress and they reflect the

law and policy proposals that are submitted by the different BP Congresses for voting and approval. Every BP Congress has an annual budget entered as items in the budget of its Shabeya. Each BP Congress elects a **Secretariat** from its members which is largely responsible for following up implementation of BP Congress decisions, and managing and organising BP Congress meetings. The Secretariat consists of a (1) Secretary General, (2) Assistant Secretary General, (3) People's Committees Secretary, (4) Social Affairs Secretary and (5) Cultural Affairs and Public Mobilisation Secretary, whose responsibilities are described in the Executive Order to Law No. 1. The Secretariat along with the BP Committee is considered one administrative unit for the purpose of budget implementation. (GPCMET 2009)

- The **Secretariat of the BP Congresses** is comprised of the GP Congress Secretariat, Secretaries of the Shabeya People's Congresses, Secretaries of the BP Congresses, and now the Secretaries of the Communes. Its responsibilities include: following up laws and decisions issued by the BP Congresses, following up on activities of the GP Committee and organisations belonging to the GP Committee, following up and evaluating BP Congress Secretariats' performance, monitoring efficacy of the People's Congresses and determining whether sectoral activity is carried out at the BP Congress or Shabeya People's Congress level. (GPCMET 2009)
- **Sectoral Basic People's Committee:** Each BP Congress elects a Sectoral BP Committee comprised of 17 Sector Committees each headed by a Secretary with at least four other members. The Committee is responsible for implementing decisions of the BP Congresses in their respective sectors, developing proposals related to the sector's operation for consideration by the BP Committee and developing periodical reports covering sector activities. The Sectoral BP Committee is supervised by the BP Committee.
- **Basic People's Committee:** The BP Committee is comprised of the Secretaries of the 17 Sector Committees and a 'head' Secretary who is elected by the BP Congress. The BP Committee is responsible for managing the different sectors as per BP Congress decisions and supervising the work of the Sectoral BP committees. In particular, the BP Committee implements

decisions of the BP Congresses within its jurisdiction, implements decisions of the GP Committee, the Sectoral GP Committees, the Shabeya GP Committee and the Shabeya People's Committee, spends the allocated BP Congress budget and proposes administrative assignments for basic education schools and primary health care institutions to the competent Shabeya People's Committee (Article 8 of Law No. 1).

3.3.4 Communes / 'Kumons'

The inhabitants of a defined geographical area comprise a Commune, headed by an elected Secretary, which consists of no more than 100 residents, 18 years of age or older. A specified number of Communes will constitute a BP Congress. All the Secretaries of the Communes form the Secretariat of the BP Congress, which is responsible for:

1. Electing a BP Congress Secretary, Assistant Secretary and Secretary for Affairs in Secretariat from among BP Congress members
2. Electing a People's Committee for the BP Congress
3. Electing Members of the Shabeya People's Congress

Based on Circular No. 1 of 2006, the Commune - BP Congress Secretariat may either supersede the role of BP Congresses, themselves electing the Secretaries of the BP Congress Secretariat and the BP Congress Committee, and therefore the members of the Shabeya People's Congress, or merely facilitate such elections. The provision itself is ambiguous. As per Circular No. 1 of 2006 regarding the Communes, the Shabeya People's Congress consists of BP Congress Secretaries, Assistant Secretaries and Secretaries for Affairs in Secretariats of BP Congress formed for the Shabeya. It is unclear whether membership in the Shabeya People's Congress has changed as a result of this circular. Applications for formation of Communes will be submitted to the Secretariat of the BP Congress, which then refers the application to the Secretariat of the Shabeya and the Secretariat of the GP Congress for approval.

3.4 Procurement Policy Development in Libya 1979-2011

During the Gaddafi regime, the NPC played a central role in shaping the policies and practices that government institutions use to acquire the goods and services they need

to carry out their responsibilities. The main remit of the Council is to initiate and develop strategic policy, provide overall direction for government-wide policies, regulations and procedures, and to promote economy, efficiency and effectiveness. The primary objective of this study is to investigate procurement policy development at this strategic planning level in the government of Libya. This strategic planning level has yet to exist with the current Transitional Government, however, various multilateral organisations (in particular the Bretton Woods organisations and the UN Post Conflict Needs Assessment) have identified public procurement policy as an area that requires immediate reform. Public procurement has been utilised as an important tool for achieving economic, social and other objectives, the very size of government markets makes it an important factor that has a significant impact on the economy of a country.

The process of making decisions and achieving consensus among the institutions of government is more complex in Libya than it is in a typical parliamentary system where only one institution (executive/Cabinet) has responsibility to develop and approve policy.

In the case of Libya, the GP Committee is the only governing institution with responsibility to identify and resolve public issues but it is less active with respect to public policy than a typical Cabinet in a parliamentary system. It is defined as being responsible for the implementation of policy rather than its initiation. The NPC is an integral initiator in the development of policy and decision-making in Libya and is a major source of policy ideas and suggestions to the BP Congresses, as they are then discussed and voted upon upstream through Congress and then either approved or not by Congress. The GP Congress is the legislative forum, which interacts with the GP Committee, serving as the intermediary between the masses and the leadership. Its responsibilities include formulating laws and decisions issued by the Congresses, selecting the Secretariat of GP Congress, determining the sectors to be managed by the GP Committees and selecting the Secretary of the NPC and the Secretariat of the GP Committee.

The BP Congresses are integral to the development of popular policies. In meetings, at least twice a year, all citizens aged 18 and over can be involved in discussing local and national issues, giving direction on popular policy at a very general level, and

approving implementation policies in the form of laws and national budgets. In addition to receiving draft laws and budgets, BP Congresses receive material that has been developed by the Sectoral GP Committees. This material is intended to contain suggestions with respect to issues that should be debated and determined and to support the work of the local BP Congresses. Each Sectoral GP Congress prepares material on issues in the sector that may be of concern to the BP Congresses, along with suggestions. The material is compiled by the GP Committee and then forwarded to the Secretariat of the GP Congress for distribution to the BP Congresses. The BP Congresses set their own agenda for discussions, and may add to the items suggested through the Sectoral GP Congresses and the GP Congress as well.

The GP Congress is a gathering of all of the Secretaries of the BP Congresses and BPs Committees, Secretaries at the Shabeyat level, the GP Committee Secretariat, the Congress Secretariat, plus additional union leadership and others. In its meetings, once or twice a year, the Congress is responsible for taking decisions about popular policies that reflect and capture the positions taken at each BP Congress and the issues that are of general concern. The Congress decisions include: final approval of budgets and of laws (through a public reading of the final draft); appointments to key positions in the governing institutions, and resolutions on major policy matters, international affairs, and procedural matters.

The NPC is the state's policy initiator. Membership includes the Secretary of the Council and the GP Committee and Secretaries of the Sectoral GP Committees, Shabeya Planning Councils, Shabeya People's Committees, University People's Committees and Research Centres. The GP Committees, Shabeya People's Committees, other bodies and public organisations report to the Council once or twice annually, indicating project expenditure and implementation progress.

Law No. 13 (2005) stipulates the remit of the NPC and its functions. The main task of the NPC is to initiate policy in varying areas of the public sector, ranging from economic plans to agricultural projects. The NPC then presents these policies to Congress. The NPC undertakes the study and suggestions of objectives and policies of economic and social transformation presented by concerned authorities and by consultants and its members. Its remit, as stipulated by Law No.13 (2005), is:

- Prepare general policies on economic and social transformation taking into account human resources and available financial resources, and present them to Congress.
- Review project plans and programmes, economic and social transformation budgets and prioritise their implementation, and present results to Congress.
- Study economic and social projects that require large investments developing the state's resources in production, society and infrastructure.
- Prepare legislation, objectives and plans aimed at general transformation and present them to the Congress.
- Reporting and updating on progress achieved in plans periodically and annually to Congress.
- Prepare amendments to transformation plans on the basis of achieved results, taking into consideration technical and financial demands.
- Suggest allocations of available financial resources between capital expenditure budgets and other projects.
- Implementation of policy regarding internal and external loans, reviewing requests for loans for capital project financing and stipulating conditions of such loans.
- Prepare plans and programmes regarding statistics, censuses, population studies, civil planning and surveying.
- Referral of conclusions reached by the Council to the GP Committee.
- Confirm that proposed projects in the transformation plan have sufficient financial and technical data.
- Confirm that technical and financial feasibility studies have been carried out, before listing them in the transformation plans and budgets.
- Follow-up and verification of the implementation of projects and their budgets under the transformation plans and preparation of corrective reports.
- Discuss follow-up reports on the implementation of the transformation plan and budget.
- Take necessary measures to postpone, annul, or stop payment on any projects found unfeasible or in contravention of public interest.
- Prepare national accounts, economic analysis and other relevant data on input, output and analysis.
- Human resource planning and coordination with relevant authorities.

- Prepare plans for international and regional development cooperation, in particular with regard to economic and social transformation.

3.5 Before the Arab Spring

Over the past four decades Libya has mostly been isolated from the international arena; throughout the 1980s and 1990s, most diplomatic relations deteriorated with the west and UN sanctions were imposed through most of the 1990s. During the decade prior to the 17th February Revolution, Col. Gaddafi's Libya had generally been accepted back into the international community and, most significantly, the global trade world after a decade of sanctions. In 2003, relations were normalised with the UK and the US. This attracted international businesses to the country exploring various opportunities in its up-and-coming economy. There were signs that Libya was moving towards a variety of economic reforms; new investment laws had been set up, and the country had developed plans which indicated a promising future for the country's economy. In hindsight, many observers now believe all the various reform initiatives were merely a public relations strategy on behalf of the Gaddafi family, namely Col. Gaddafi's son, Seif Islam Gaddafi, who was viewed by many as the reformer of Libya. Libya was looking for overseas expertise in energy, as it wanted to increase oil production; tourism and the development of roads, hotels and museums; telecommunications and the expansion of the mobile network; health, as there is an urgent need to upgrade hospitals; aviation, which has suffered from the international sanctions; and infrastructure projects, including the spread of the road system, better irrigation and a possible new coastal railway (Binyon, 2005). These projects will be needed now more than ever in war-torn Libya.

The Libyan government had aimed to consolidate and accelerate economic growth and reforms over the past few years by stepping up privatisation and international investment and cooperation. It was seeking foreign involvement across all sectors of the economy, carrying out various regulatory changes to support the vast swathe of development, the establishment of the Libyan Stock Market and the development of the Economic Development Board were indicators of the reforms in place. The Libyan government was preparing and drafting laws, which were approved by the General People's Congress in 2010, on encouraging investment and organising economic activity. The laws set out a clear, appropriate legislative framework for the

diversification of the Libyan economy (GPCET, 2010). Libya is an oil-producing country and is now also a major gas supplier to Europe, and some of these revenues were funnelled down to the executive government to finance the reforms that were underway in the country, 150 billion Libyan Dinars (GPC, 2009), (GPCET, 2010) were set aside from the country's reserves to pay for projects including infrastructure, consultancy services, telecoms and construction. Oil production in Libya reached approximately 1.75 million barrels per day over the second half of the last decade and this inevitably funded the various reforms that were underway at the time. However, poor compliance with transparent, fair and effective procurement systems meant a drop in equal and competitive opportunities; government procurement favoured a limited elite, allowing for the emergence of monopolies (Ghuel, 2012).

The Libyan government contracted the following projects in 2009-2011:

- 550,000 housing units.
- 180,000 housing grants.
- An integrated utilities project across 41 cities.
- 3,200 kilometres of railroads.
- An expansion of sea ports to accommodate 25 million tons per year.
- International airports in Tripoli, Benghazi, Sebha, Tobruk, Alabrag, Alkofra, Ghadamed and Ghat.
- 5,000 kilometres of major roads linking cities.
- 7,000 kilometres of secondary roads within cities.
- 560 kilometres of coastal roads.
- An expansion of GSM network coverage.
- 1.5 million fibre optic cabling in Tripoli and Benghazi.
- Adding 8000 megawatts to existing electricity capacity.
- 15,000 kilometres of high voltage networks.
- Seawater desalination plants to achieve 320,000 cubic metre output per day.
- Six harbours and fishing ports.
- Construction of 21 dams to retain 82 million cubic metres of water per year.
- Increasing the production of oil to 2.3 million barrels per day by 2015.
- Increasing production of natural gas to 323 billion cubic feet by 2015.
- Infrastructure projects for 40 cities across Libya.
- 50,000 new classrooms.

- 28 universities.
- Eight hospitals.
- 29 sport cities (stadia).
- Six ICT complexes, 145 cultural centres, 48 theatres and 27 public libraries.
- Tourism development, including 33 museums and the renovation of nine archaeological sites.
- Maintenance and construction of government buildings.

(MOP, 2013)

3.6 Arab Spring

Towards the end of 2010, the southern Mediterranean witnessed extreme and dramatic changes that will continue to influence the political, economic and social climate for years to come. The political upheavals that began in Tunisia spread to Egypt, Libya, Yemen, Bahrain and Syria, clearly showing the frustrations being felt across the MENA region with regard to economic and social challenges. This came to be known as the ‘Arab Spring’. Most relevant, however, to this research are the events that took place in Libya on 15th February 2011, when a group of Libyan lawyers and judges were demonstrating in front of the city court house in Benghazi, demanding that their cases of the various disappearances of family members and killings in regime prisons be taken up by the Supreme Court to challenge certain members of the regime. The regime, in an effort to crack down on the demonstrators, killed dozens. This immediately led to anarchy, and the storming and destruction of the regime’s security apparatus institutions, barracks and storage facilities in Benghazi. Two days later, what became to be known as the 17th February revolution had started and, shortly after that, a rebel government was formed. On the 2nd March 2011, the National Transitional Council (NTC) announced its existence (See Annex 2) as the Transitional Government in Libya and appointed a prime minister (Mahmoud Jibril). By the 10th March, France recognised the NTC as the representative authority of Libya and, on the 12th March, the Arab League issued a decree requesting the UN Security Council adopt a ‘no fly zone’ over Libya. On the 17th March, Security Council resolution 1973 was passed, allowing for military intervention in Libya. On 19th March, French warplanes engaged Col. Gaddafi’s troops over Benghazi.

Following these events, the international community refused to recognise the Gaddafi government as the legitimate representative of the Libyan people and, gradually, the interim governing body of the NTC and its Executive Committee was bilaterally recognised by other countries as the legitimate ruling authority in Libya. October 2011 saw the end of the Gaddafi era in Libya, and the NTC became the sole governing body of Libya. 7th July 2012 saw the Libyan people voting for the first time in five decades, choosing their constitutional assembly of 200 members which will draft a constitution for Libya during an 18-month timeframe. After this, an elected Parliament will redraft the majority of all state legislation, as well as policy formation practices abolishing Col. Gaddafi's Third Universal Theory as the de facto 'constitution'.

It should be noted that, although the Gaddafi regime has collapsed, most legislation, directives and laws (including public procurement policy) are still intact and are used today. The exception was during the conflict, when The International Contact Group approved terms of reference in Rome on 5th May of 2011 for the establishment of a Temporary Financing Mechanism (TFM) to meet the urgent needs of the NTC of Libya in connection with fiscal responsibilities it had assumed for the welfare of the civilian population within areas it controlled. On 13th April 2011, members of the Contact Group endorsed the proposal for a TFM to meet the immediate, short term needs of the NTC for access to foreign currency that was then needed to secure the purchasing of fuel and food; all procurement was to be fully compliant with UN Security Council's Resolution 1970 (2011) and 1973 (2011), and financial arrangements under the TFM were to be used efficiently, transparently and accountably for the purposes intended. This TFM was open to receive and use a broad range of financial inputs, without excluding the possibility of other financial arrangements. Contributions were accepted by:

1. Direct contributions of funds;
2. Credit arrangements acceptable to the NTC; and
3. Other financial resources that contributors wish to make

Contributors, including Qatar, Kuwait, Canada, the US and Bahrain could then instruct which window their contributions may be used for and attach conditions concerning the use of resources they contributed.

- Window 1: general governing expenses, to include support for public services, public sector salaries, and budget support.
- Window 2: commodities and subsidies needed to maintain basic living conditions among the population, including the short term financing costs associated with import of such commodities.

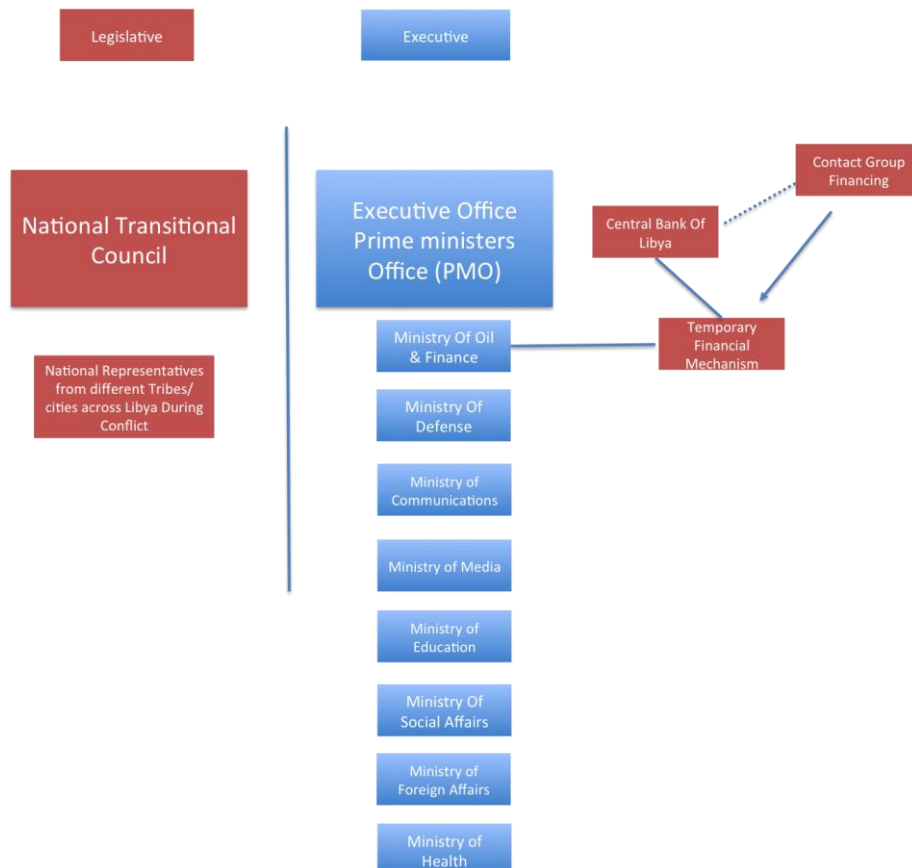


Figure 3.7: Highlights the Transitional Rebel Government of Libya (2011)

As illustrated in the figure 3.7 (above), funding of the, at the time rebel government was provided through the Contact Groups Temporary Financing Mechanism, some states directly funded the Central Bank of Libya such as Turkey and some funded the NTC directly such as Qatar. Procurement conditions did come with most of the funds provided, e.g. Turkey provided the NTC with 200Million USD on the condition that the Government was to purchase goods solely from Turkey.

The Public Finance Model adopted from the period of May 2011-November 2011 was at best rudimentary and based on using the forms that existed in the Gaddafi regime system (DfID, 2011). There were few staff at the Ministry of Finance and Oil, and

effectively no coherent Public Financial Management (PFM) system in place. A budget for the NTC for the period April – September 2011 had been prepared by the Budget Director at the Ministry of Oil and Finance to distribute a nominal LYD 50 Million across the Executive Offices plus the National Transitional Council using the Gaddafi regimes expenditure categories. There was no budget preparation process involving Executive Office input, and the bulk of the expenditure distribution was earmarked to equipment, including hospital equipment, (LYD 5.8 Mil), Food (LYD 4.7 Mil), Hygiene and Cleaning (LYD 4.6 Mil) and Maintenance (LYD 4.0 M). LYD 16.4 Mil was retained as a reserve to meet requirements as further areas of Libya came under NTC control as the conflict continued. Some expenditure has been made against this budget, notably Health and Hospital related where the nominal budget of LYD 11.7 m has been spent. It should be noted however that the procurement activities of the various ministries were not subject to controls and temporary procurement policy which was enacted on funds in the TFM (Annex 3) as the funds were not funnelled through it. Ministries were required to report monthly expenditure by the 10th of the month during that period, but this did not happen (DfID, 2011). The Temporary financing mechanism made the majority payments for the purchase of goods and services.

By the end of the conflict in Libya, the NTC's TFM had received US\$1.8 billion and had spent US\$1.1 billion on recurrent expenditures (Window 1) and US\$700 million on commodities (Window 2).

Since the unfreezing of assets, the Transitional Government in Libya has now reverted back to the previous procurement process that was in place during the Gaddafi regime and this is the process this research explored. Following the declaration of liberation in October 2011 by the NTC of Libya which led the rebel movement, an interim government appointed in December 2011 organised the national election of a 200 member General National Congress (GNC) on 7th July 2012. That was the first election in Libya in six decades. The GNC will also elect a constitutional assembly to draft a new constitution which will be submitted to a referendum in 2013 (World Bank, 2013). On 2nd September 2011, Libyan Development Minister, Dr Ahmed Jehani, convened a meeting with the UN and international and bilateral partners to organise international assistance for Libya's transition and recovery. This resulted in a Post Conflict Needs Assessment (PCNA)

which is a tripartite agreement to cooperate on post-conflict assessment between the European Union (EU), the World Bank and the UN. The assessment developed 13 sector focal points: one of which is Public Finance Management which includes public procurement as an area Libya requires assistance in, post-conflict.

The conflict had an unprecedented impact on the Libyan economy. Oil production fell from 1.49 million barrels per day (bpd) in January 2011 to as low as 22,000 bpd by July 2011 as a result of the conflict. GDP growth declined by 60% as oil production declined to an average of 500,000 bpd by the end of 2011. Non-oil output growth also declined by 50% as economic activities were interrupted. Although its competitiveness is ranked at 113 out of 146 in the World Economic Forum's (WEF) Competitiveness Index for 2012-2013 (WEF, 2012), the economy has experienced an impressive recovery as oil production and exports have rebounded faster than originally predicted. Oil production for the first seven months of 2012 reached 302 million barrels, equivalent to an average of 1.42 million bpd. Hydrocarbon output, including natural gas, is projected to increase by more than 170% in 2012 and will continue to recover in 2013. Key indicators of the WEF (Figure 3.7 and 3.8) illustrate an upward curve in development.

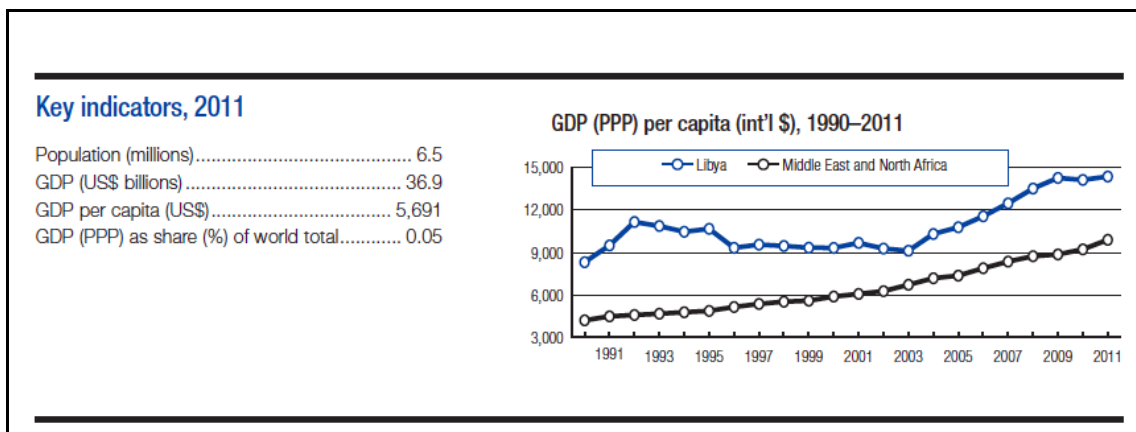


Figure 3.8: Libya, Key Indicators (WEF, 2012)

Stage of development

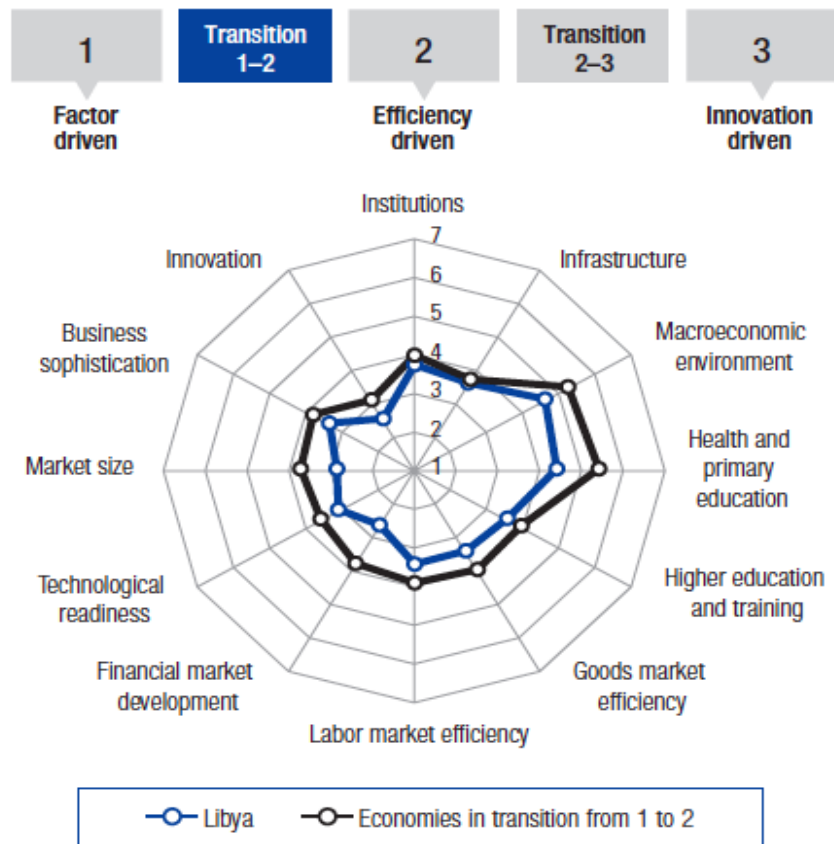


Figure 3.9: Libya, Stage of Development (WEF, 2012)

The pressure on public finances and fiscal policy is daunting, as the Libyan Government seeks to respond to the popular aspirations unleashed by the revolution. Current expenditures are ballooning, due to a higher wage bill, compensation and subsidies. The government announced a budget in March 2012 with expenditure reaching 50% of GDP for 2012. However, the 2012 outcome will be limited by the absorptive capacity of the Libyan economy to execute the announced current and capital expenditures. Therefore, fiscal expenditures are more likely to reach 42% of GDP in 2012 and total revenues will achieve 40% of GDP. A relatively low fiscal deficit would emerge in 2012 (2% of GDP), and a surplus could emerge again in 2013 (World Bank, 2012).

Libya has ongoing projects and is contractually bound by state purchases made during the Gaddafi regime. This now needs to increase nearly threefold. The post-conflict projected budget for infrastructure development is now set as 500 billion Libyan

Dinars (£250 billion) as estimated by the Transitional Government (Jebril, 2011). Libya had some room to manoeuvre during the Gaddafi regime and still has on spending, because it had built up substantial reserves during several years of high oil prices, and the Libyan government was (and is) the largest customer in the country. However, the issue of continuation of existing contracts procured by the previous regime will take a long time to be resolved. The main obstacles to these projects continuing in post-conflict Libya are firstly, security and, secondly, the prevailing feeling that most of these projects suffer from corruption and this will make it difficult for the government to gain consensus on reinstating these projects (Ghuel, 2012). Measures have been taken by the Transitional Government to establish a public procurement revision committee with a mandate to review all contracts (EU, 2012).

4.0 Methodological Approach

4.1 Introduction

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

4.2 Research

Collis & Hussey (1997) mention that there is no consensus in the literature as to how research should be defined; they state that this is due to the fact that research means different things to different people. However, there is agreement that research is a process of enquiry and investigation, in a systematic way, in order to increase knowledge (Collis & Hussey, 1997). Saunders et al. (2007) identifies the characteristics of research such as that data is collected and interpreted systematically with a clear purpose to find things out. They continue to define research as something that people undertake to find things out in a systematic way, thereby increasing knowledge (Saunders et al., 2007). Cavanna et al. (2000) explain research as being:

‘The process of thoroughly studying and analysing the situational factors surrounding a problem in order to seek out solutions to it’

(Cavanna et al., 2000, p4)

They continue then to define research as being:

‘An organised, systematic, data-based, critical, objective scientific inquiry or investigation into a specific problem or issue with the purpose of finding solutions to it, or clarifying it’

(Cavanna et al., 2000, p5)

Collis & Hussey (1997) summarise the purpose of research as:

- To review and synthesise existing knowledge;
- To investigate some existing situation or problem;
- To provide solutions to a problem;
- To explore and analyse more general issues;
- To construct or create a new procedure or system;
- To explain a new phenomenon;
- To generate new knowledge; and
- A combination of any of the above.

Cavanna et al. (2000) mention that research could be undertaken for two different purposes, one of which is solve a particular problem, and the other is to generate a body of knowledge. The former is known as applied research and the latter as basic, fundamental or pure research.

Collis & Hussey (1997) classify research according to:

- The purpose of the research: why are you conducting it?
- The process of the research: how you will collect and analyse your data?
- The logic of the research: whether you are moving from the general to the specific, or vice versa.
- The outcome of the research: whether you are trying to solve a particular problem or make a general contribution to knowledge.

Easterby-Smith et al. (2004) also classified research into three main categories: Pure, Applied, and Action. Pure research is intended to lead to theoretical development where there may or not be any practical implications. There are three forms that theoretical developments may take as an outcome of pure research:

- Discovery: when a totally new idea emerges from empirical research, which may revolutionise the thinking on a particular topic.
- Invention: where a new technique, method or idea is created to deal with a practical kind of problem.
- Reflection: where an existing theory, technique or group of ideas is re-examined in different organisational or social context. This form of research is widely used, especially for doctoral theses.

Applied research, according to Easterby-Smith et al. (2004), intends to lead to the solution of a specific problem, using the application of theory. Applied research projects frequently form the foundation of dissertations for MBA or Masters' level students.

Action research starts from the idea that if you want to understand something you should try changing it; a common feature of action research is that the research no longer tries to maintain a distance and separation from the thing being researched (Easterby-Smith et al., 2004). It also enables observation in action, rather than merely accessing opinions, as is the case in an interview-only study (Walsham, 2006).

The purpose of this research is to review existing knowledge regarding public procurement policy, and to investigate influences on procurement policy development in the Libyan context. This research could be classified as basic or pure research with the intent to lead to theoretical development with a practical implication (see Figure 1.1) in the form of reflection by addressing the phenomenon in a different organisation, country and social context, thus being the National Planning Council (NPC) in the Libyan public sector.

4.3 Research Philosophy

Easterby-Smith et al. (2004) emphasises the importance of understanding the philosophical issues in clarifying research design. The relationship between theory and data is an issue that has been hotly debated by philosophers for many centuries. Understanding philosophical issues clarifies research design, which will work, which will not and will also help in identifying designs that may be part of the researcher's past experience.

The two traditions, mentions Easterby-Smith (2000), are social constructivism (phenomenology) and positivism. Although it is possible to draw up a comprehensive list of assumptions and methodological implications associated with positivism and constructivism, it is not possible to identify any philosopher who subscribes to all aspects of both positions. Towards the end of the 19th century, social scientists had adopted the natural scientists' approach of positivism but it was not long until some social scientists began to argue against positivism. The argument was that the physical sciences only deal with objects which are outside 'us', whereas the social sciences

deal with actions and behaviour which is generated from within 'us', the human mind (Collis & Hussey, 2003). This post-positivist stance became known as phenomenology, which is the science of phenomena. The main criticisms of the positivist paradigm were that:

- It is impossible to treat people as being separated from their social contexts and they cannot be understood without examining the perceptions they have of their own activities.
- A highly structured research design, as is required by the deductive nature of the positivist paradigm, imposes certain constraints on the results and may ignore more relevant and interesting findings that would else be discovered.
- Researchers are not objective, but are part of what they observe, i.e., they bring their own interests and values to the research.
- Capturing complex phenomena in a single measure is, at best, misleading.

(Collis & Hussey, 2003)

Phenomenologists argue that social reality is dependent on the mind and that there is no reality independent of the mind, unlike the positivist stance. In that respect, the phenomenological philosophy advocates an attempt to understand social reality as it has been grounded in people's experiences throughout the years of life and employment within organisations and nations; therefore phenomenology generally attempts to understand specific phenomena by establishing the meanings that people assign to them (Walsham, 1993) and, as a result, unlike positivism, does not view 'reality' as objective, measurable and external.

Easterby-Smith et al. (2004, p30) summarises the distinction between positivist and phenomenological philosophies in Table 4.1 and Collis & Hussey (2003) also provide an outline of the differences between the two as shown in Table 4.2.

	Positivism	Social Constructionism (Phenomenology)
The observer	Must be independent	Is part of what is being observed
Human interests	Should be irrelevant	Are the main drivers of science
Explanations	Must demonstrate causality	Aim to increase general understanding of the situation
Research progress through	Hypotheses and deduction	Gathering rich data from which ideas are induced
Concepts	Need to be operationalised so that they can be measured	Should incorporate stakeholder perspective
Units of analysis	Should be reduced to simple terms	May include the complexity of 'whole' situations
Generalisation through	Statistical probability	Theoretical abstraction
Sampling requires	Large numbers selected randomly	Small numbers of cases chosen for specific reason

Table 4.1: Contrasting Implications of Positivism and Phenomenology (Easterby-Smith et al., 2004, p30)

Positivistic Paradigm	Phenomenological Paradigm
Tends to produce quantitative data	Tends to produce qualitative data
Uses large samples	Uses small samples
Concerned with hypothesis testing	Concerned with generating theories
Data is highly specific and precise	Data is rich and subjective
The location is artificial	The location is natural
Reliability is high	Reliability is low
Validity is low	Validity is high
Generalises from sample to population	Generalises from one setting to another

Table 4.2: The Main Differences between the Two Paradigms (Collis & Hussey, 2003)

As mentioned earlier, there has been a trend away from positivism towards phenomenology since the early 1980s (Easterby-Smith et al., 2004). Based on the characteristics of both philosophies and the nature of this particular research, the phenomenological philosophy underpins this study. This enables the researcher to interact with the organisation being studied (NPC), so that the researcher can explore and understand the phenomenon of public procurement policy to be investigated. The objectives set for this research would require a deep understanding of the social context within which it is set and will rely on data gathered, from which ideas can be induced.

4.4 Research Approach

The extent to which one is clear about the theory at the early stages of a research project raises the issue of ‘approach’. This could be if one opted for a deductive approach, in which one would develop a theory and hypothesis, and design a research strategy accordingly in order to test that particular theory. The inductive approach, on the other hand, is where the theory is still unknown but it is developed as a result of the analyses of the data collated (Saunders et al., 2007). Deductive research is a study in which a conceptual and theoretical structure is developed and then tested by empirical observation (Collis & Hussey, 2003). Induction is a process by which we observe certain phenomena and arrive at certain conclusions (Cavanna et al., 2000). Or as Collis & Hussey (2003) mention, inductive research is a study in which theory is developed from observation of empirical reality.

Figure 4.1 illustrates the inductive and deductive approach in business research.

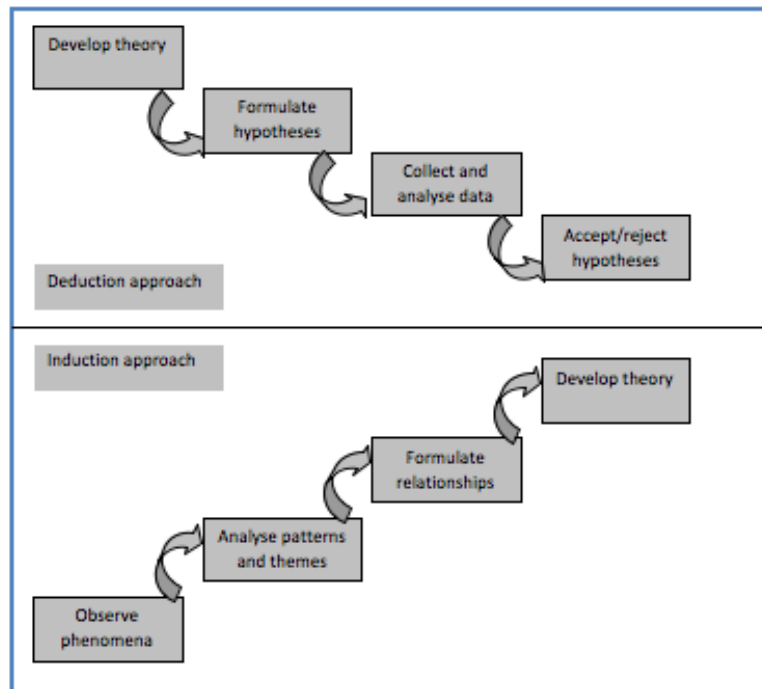


Figure 4.1: Deductive & Inductive Approach. (Cavanna et al., 2001, p36)

Whilst the deductive approach owes more to positivism, inductive leans more towards the phenomenological research philosophy (Saunders et al., 2007). Table 4.3 depicts the major differences between the deductive and inductive approaches to research.

Deduction (Quantitative) Emphases:	Induction (Qualitative) Emphases:
Scientific principles moving from theory to data	Gaining an understanding of the meanings humans attach to events
The need to explain causal relationships between variables	A close understanding of the research context
The collection of quantitative data	The collection of qualitative data
The application of controls to ensure validity of data	A more flexible structure to permit changes of research emphasis as the research progresses
The operationalisation of concepts to ensure validity of data	A realisation that the researcher is part of the research process
A highly structured approach	Less concern with the need to generalise
Researcher independence of what is being researched	
The necessity to select samples of sufficient size in order to generalise conclusions	

Table 4.3: Major Differences between Both Approaches to Research (Saunders et al., 2007)

Taking into consideration the differences in approach, it could be seen that the inductive approach emphasises the close understanding of the research context, the collection of qualitative data has a more flexible approach to allow for changes in research emphasis as the study progresses. Referring back to this research, an inductive approach would be required to appropriately answer the research questions and achieve the objectives of the research. In order to do that, the researcher will need to gain a clear and close understanding of the Libyan public sector context and the NPC as the country's policy initiator in the governance system. The researcher will rely heavily on qualitative data obtained via interviews to achieve this.

4.5 Design and Strategy

There are numerous strategies that could be used in management research, some of which have a positivist posture and some a phenomenological one. The choice of strategy is guided by one's research questions, objectives, the extent of existing knowledge, the amount of time and other resources available (Saunders et al., 2007).

Yin (2003) states that three conditions relate to the choice of research strategy:

- Type of research questions posed. Robson (2003) also mentions that the research strategy and the methods or techniques employed in a research must be appropriate for the questions one wants to answer.
- The extent of control the researcher has over actual behavioural events.
- The degree of focus on contemporary, as opposed to historical, events.

The first condition, mentions Yin (2003), covers the research questions: as illustrated in the Table 4.4, there is a basic categorisation of the types of questions into the series who, what, where, how and why.

Strategy	Form of research questions	Requires control over behavioural events?	Focuses on contemporary events?
Experiment	How, Why	Yes	Yes
Survey	Who, What, Where, How many, How much	No	Yes
Archival analysis	Who, What, Where, How many, How much	No	Yes/No
History	How, Why	No	No
Case study	How, Why	No	Yes

Table 4.4: Relevant Situations for Different Research Strategies (Yin, 2003)

4.5.1 The Research Questions and the Choice of Strategy

As mentioned above, the research questions one seeks to answer determines the most appropriate strategy. ‘What’ questions are predominantly concerned with asking how many or how much. ‘Who’ and ‘where’ research questions suggest the use of fixed strategies such as surveys. ‘What’ questions suggest a more flexible strategy (Yin, 2003).

4.5.2 Research Questions

- *What are the influencing factors that directly or indirectly affect procurement policy development in the Libyan context?*
- *How do these factors affect procurement policy development?*
- *Why do these factors exist?*

Taking into consideration the above section, and the aims and objectives, a case study approach will be utilised in this research. The data required for analyses would need to be sufficient (breadth) and thorough (depth) to allow for theory generation. This will be achieved by using multiple sources of evidence.

4.6 Case Study

Yin defines a case study as:

‘..an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident’

Yin (2003, p13)

Typical features of a case study:

- Selection of a single case of a situation, individual or group;
- Study of the case in its context;
- Collection of information via a range of data collection techniques such as observation, interviews or documentary analyses; and
- Systematic but flexible research strategy which provides detailed prescriptions for data analyses and theory generation.

4.6.1 Types of Case Study

Table 4.5 outlines some types of case studies. There are various types of case studies, where the ‘case’ can be anything. An individual person as the case is a simple, single case which, for example, would just focus on that particular person, organisation or group in its context. Multiple case studies, on the other hand, tend to be more complex in nature and would involve the study of several individual ‘cases’ being people, organisations or groups, again within their context (Robson, 2002).

Type	Attributes
1. Individual case study	Detailed account of one person tends to focus on antecedents, contextual factors, perceptions and attitudes preceding a known outcome. Used to explore possible causes, determinants, processes, experiences, etc. contributing to the outcome.
2. Set of individual case studies	As above, but a small number of individuals with some features in common are studied.
3. Community study	Study of one or more local communities. Describes and analyses the pattern of, and relations between, main aspects of community life. Commonly descriptive, but may explore specific issues or be used in theory testing.
4. Social Group study	Covers studies of both small direct contact groups for example families and larger more diffuse ones such as organisational groups. Describes and analyses relationships and activities.
5. Studies of organisations and institutions	Studies of firms, workplaces, schools, trade unions, departments. Many possible foci, e.g. best practice, policy and organisational issues, cultures, processes of change and adaptation.
6. Studies of events and relationships	Focus on a specific event. Very varied; includes studies of police – citizen encounters, doctor – patient interaction, specific crimes or incidents, studies of role conflicts, stereo types, adaptations.

Table 4.5: Case Study Types (Robson, 2002, after Hakim, 1987)

As is clearly illustrated in Table 4.5, the most appropriate type of case study for this research would be the study of organisations. This type of case study would be to study institutions and departments (the National Planning Council of Libya), with focal points being public procurement policy development, best practice, policy, and organisational issues and cultures. Perry (1998) mentions that there are no precise guides for the number of cases to be included, but Voss et al. (2002) argues that the fewer the cases, the greater the opportunity for in-depth observation.

Yin (2003) states that each case must be carefully selected so that it either:

- Predicts similar results (a literal replication); or
- Predicts contrasting results but for predictable reasons (a theoretical replication).

4.6.2 Justification for Choice of Case Study Organisations

The choice of how many cases to be addressed and how they are selected is an important aspect of a research study (Denscombe, 2003). There are four grounds on which case study selection can be justified on the basis of suitability (Denscombe, 2003): Typical instance, Extreme instance, Test-site theory and Least Likely instance.

Yin (2003) argues that multiple case studies may be preferable to a single case study and that, where a single case study is used, one needs to have a strong justification for this choice. For this research the researcher has chosen the NPC of Libya, which is the public policy initiator in the Libyan system of governance. The NPC's Membership includes the Secretary of the Council and the GP Committee and Secretaries of the Sectors' People's Committees, Shabeya Planning Councils, Shabeya People's Committees, University People's Committees and Research Centres. The GP Committees, Shabeya People's Committees, other bodies and public organisations report to the Council once or twice annually indicating project expenditure and implementation progress. Law No. 13 (2005) stipulates the remit of the NPC and its functions. The main task of the NPC is to initiate policy in varying areas of the public sector, including public procurement policy. One of the main remits of the Council is to prepare general policies on economic and social transformation, taking into account human resources and available financial resources.

4.7 Methods of Data Collection

'Data refers to known facts or things used as a basis for interference of reckoning'

(Collis & Hussey, 2007, p160)

There are two types of data, types in this case being the sources from which the data has been derived. Primary data is the data collected at source such as survey data, or experimental data, interviews or focus groups, whereas secondary data is data which already exists such as reports, archives, laws, annual reports, etc. Both of these could be either quantitative or qualitative in nature (Collis & Hussey, 2007; Saunders et al., 2007).

Robson (2002) suggests an interesting 'rule of thumb' for selecting 'primary data' collection methods:

- To find out what people do in public – direct observation method could be used.
- To find out what they do in private – interviews or questionnaires would be a suitable method.
- To find out what they think feel or behave – interviews, questionnaires or attitude scales could be used.
- To determine their abilities or measure intelligence or personality – standardised tests would be appropriate.

There are numerous ways that can be used to collect research data. For instance, if the study uses a quantitative methodology, the researcher will be attempting to measure variables or count occurrences of a phenomenon. On the other hand, if the study uses a qualitative methodology, the researcher will emphasise meanings and experiences related to the phenomenon (Collis & Hussey, 2003).

According to Yin (2003) there are six sources of evidence that are most commonly used in doing case studies:

1. Interviews
2. Documents
3. Archival records
4. Direct observations
5. Participant-observation

6. Physical artefacts

No single source of data has an overall advantage over the others. Yin (2003) regarded that the combination of multiple sources of evidence can help to clarify the real meaning of the phenomenon being seen. Therefore, a case study should use as many sources of data that are relevant to the study. Table 4.6 illustrates the strengths and weaknesses of each of the six source of evidence.

Source of Evidence	Strengths	Weaknesses
Documentation	stable - can be reviewed repeatedly unobtrusive - not created as a result of the case study exact - contains exact names, references, and details of an event broad coverage - long span of time, many events, and many settings	retrievability - can be low biased selectivity, if collection is incomplete reporting bias - reflects (unknown) bias of author access - may be deliberately blocked
Archival Records	[Same as above for documentation] precise and quantitative	[Same as above for documentation] accessibility due to privacy reasons
Interviews	targeted - focuses directly on case study topic insightful - provides perceived causal inferences	bias due to poorly constructed questions response bias inaccuracies due to poor recall reflexivity - interviewee gives what interviewer wants to hear
Direct Observations	reality - covers events in real time contextual - covers context of event	time consuming selectivity - unless broad coverage reflexivity - event may proceed differently because it is being observed cost - hours needed by human observers
Participant Observation	[same as above for direct observations] insightful into interpersonal behaviour and motives	[same as above for direct observations] bias due to investigator's manipulation of events

Table 4.6: Sources of evidence: strengths and weaknesses (Yin, 2003)

4.8 Triangulation

Triangulation is a term borrowed from navigation, surveying a minimum of three reference points to check an object's location (Smith, 1975 as cited by Easterby-Smith et al., 2004). There are four distinct categories of triangulations (Easterby-Smith et al., 2004): theoretical, data, investigator and methodological triangulation.

- Theoretical triangulation: involves borrowing models from one discipline and using them to explain situations in another discipline.
- Data triangulation: refers to collecting data over different times from different sources.
- Triangulation by investigator: where different people collect data on the same situation and data, and the results are then compared.
- Methodological triangulation: where the investigator using both quantitative and qualitative methods of data collection.

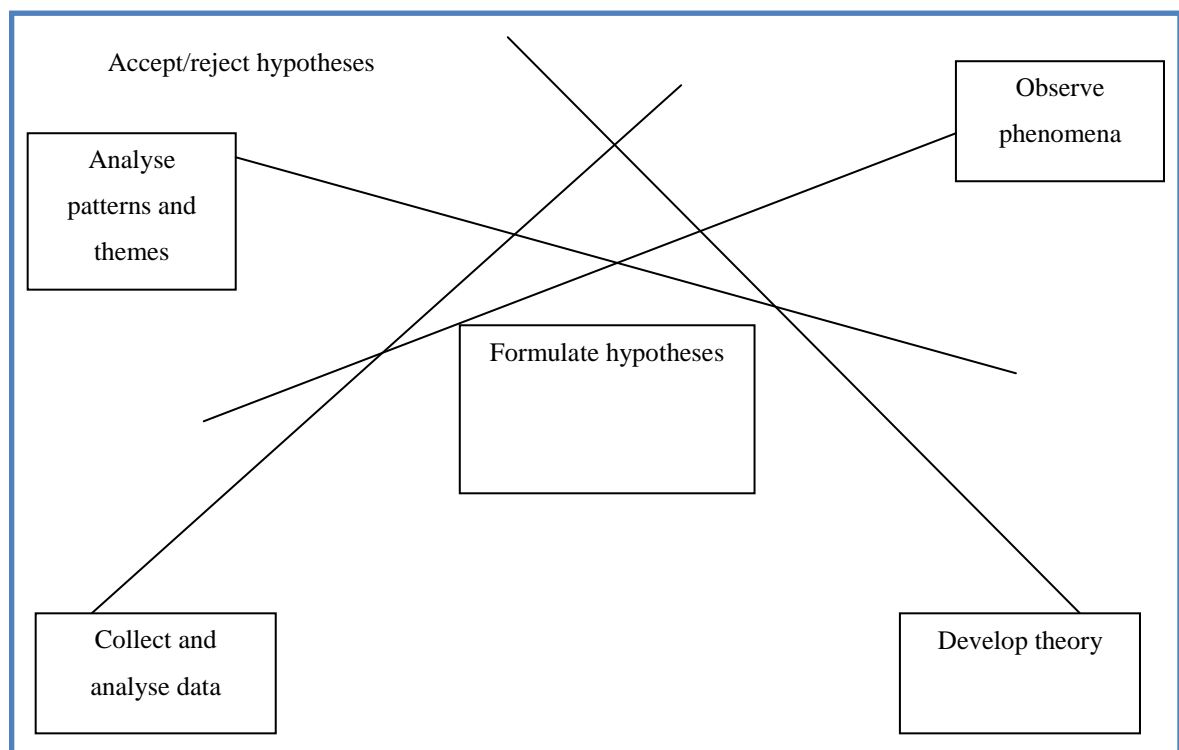


Figure 4.2: Triangulation (adapted from Denscombe, 2003, p133)

Referring back to the research questions set, interviews will be used as the main method of collecting primary source data, and documentary research and archival

records as a means for collecting further data for triangulation purposes. Participant observation will also be used.

4.9 Interviews

‘An interview is a purposeful discussion between two or more people’

(Kahn & Canell, 1958 as cited by Saunders et al., 2007, p310)

A typology that is commonly used is thus related to the level of formality and structure of the interview. They are predominantly categorised as either being structured, semi-structured or unstructured (Saunders et al., 2007). Robson (2002), however, refers to a different typology where interviews are classified by ‘who is steering’, hence classified as respondent interviews or informant interviews.

Structured interviews utilise predetermined questions, just as a questionnaire would, where an identical set of questions is used for all interviewees. The purpose is to collect quantifiable data. Semi-structured interviews, on the other hand, utilise similar themes rather than identical questions. These themes are obviously fitted to the context and questions may sometimes evolve during the interview process. This type of interview is used to collect qualitative data that is recorded either by taking notes or by audio recording equipment.

Unstructured interviews are predominantly used to explore a general area in-depth or phenomena in which one is interested. In this case, there are no predetermined questions and the interviewee is given the opportunity to talk freely about events, decisions, etc., in context. This type of interview has been labelled as the informant interview by Robson (2002). The steer of the interview is somewhat in the hands of the interviewee, whereas a respondent interview is one where the researcher or respondent directs or steers the interview; this is the case of a semi-structured or structured interview (Saunders et al., 2007).

Interviews are associated with both positivist and phenomenological methodologies, and may be face-to-face, voice-to-voice or screen-to-screen; conducted with individuals or a group of individuals. Interviews are claimed to be ‘the best method of gathering information’ (Easterby-Smith et al., 2004). The main reason for conducting qualitative interviews is to understand how individuals construct the reality of their

situation, formed from the complex personal framework of beliefs and values which they have developed over events in their world (Easterby-Smith et al., 2004). Easterby-Smith et al. (2004, p87) mentions that semi-structured interviews are appropriate when:

- It is necessary to understand the constructs that the interviewee uses as a basis for the researcher's opinions and beliefs about a particular matter or situation.

One aim of the interview is to develop an understanding of the respondent's 'world' so that the researcher might influence it.

- If the step-by-step logic of a situation is not clear; the subject is highly confidential or commercially sensitive, and there are issues about which the interviewee may be reluctant to be truthful.

The semi-structured interview type has been identified as the method of interview to be used for this research. The aim of the interview is to understand the interviewee's views on the factors influencing public procurement policy development in the Libyan context. Walsham (2006) also mentions that interviews should be supplemented by other forms of data in an interpretive study. These could include press, media and other publications.

4.10 Documentary Research

Documentary research is associated with historical research. History, as a discipline, provides us with a sense of our past and, with that, the ways in which our present came about; employing a range of documentary sources such as state government files will enable the researcher to reflect on contemporary issues.

- Primary sources refer to those materials which are written or collected by those who actually witnessed events which they describe.
- Public and private documents: documents can be divided into four categories according to the degree of their accessibility: closed (e.g., secret police files), restricted (e.g., medical files and confidential corporate reports), open-archival (e.g., census reports) and open-published (e.g., government budget statistics).

- Solicited and unsolicited documents: some documents (e.g., government surveys and research projects) would have been produced with the aim of research in mind, whereas others (e.g., diaries) would have been produced for personal use. However, even if unsolicited documents are for personal use, they still are addressed to an audience.

This study will collect, summarise, and analyse the relevant documents for this research: laws, GP Congress decisions, recommendations of the NPC, minutes of meetings of the GP Congresses (where the issue of state procurement policy was discussed), as well as minutes of meetings of such discussions being made in the GP Congress and the BP Congress. All will be collected and assessed to determine state practice and procurement policy development in Libya. The researcher will concentrate more on qualitative content but will be aware of any quantitative trends that may arise during the analysis.

4.11 Participant Observation

Participant observation will also play an important role in this research. This method will allow the researcher to be immersed in the day-to-day activities of the population the researcher set out to study. Participant observation is seen as a process in which a researcher establishes relationships with the individuals and groups in their natural setting and will lead the researcher to abandon preconceptions that may have been 'hypothesised' by depending on documentary research alone (Mack & Woodsong, 2005).

There are four roles of field research that assist in the process of analysis (Mack & Woodsong, 2005):

- Complete participant: the researcher engages fully in the activities of the group or organisation under investigation. Their role is also covert for their intentions are not made explicit. However this could be argued to be unethical and for the purpose for this research, will be not be used.
- Participant as observer: the researcher adopts an overt role, and makes their presence and intentions known to the group. Disadvantages of this approach are that the researcher may become a 'fan' or supporter, although this does not mean attempting to act as one of the group, or there may be a conflict in this particular

instance where the researcher may be one of the group.

- Observer as participant: the researcher moves away from the idea of participation. This usually involves one-visit interviews, and calls for relatively more formal observation. Here, there is a possibility of misunderstanding as it is more of an encounter between strangers, however this will not be the case in this particular research as the researcher is fully acquainted with the majority of the people in the case study organisation. However, this limitation will be taken into consideration.
- Complete observer: the researcher is uninvolved, detached and merely passively records behaviour at a distance, e.g., sitting in at a meeting taking minutes.

The researcher intends to observe the state's practice with regards to public sector procurement policy development at the NPC. This will be achieved predominantly by attending meetings. The GP Congress and BP Congress will also be attended.

4.12 The Pilot Study

Saunders et al. (2012) defines a pilot study as:

'A small-scale study to test a questionnaire, interview checklist or direct observation schedule, to minimise the likelihood of respondents having problems in answering the questions and of data recording problems as well as to allow some assessment of the questions' validity and the reliability of the data that will be collected'

(Saunders et al., 2012 p)

The researcher conducted four pilot interviews in order to determine the suitability of the questions used in the interviews for the audience targeted. The researcher modified the interview questions based on some minor comments from the pilot audience; the interviewees suggested the researcher would most likely encounter 'politically correct' responses to some interview questions posed. The pilot study was conducted at the Academy for Postgraduate Studies; four NPC advisors agreed to conduct the interviews and provided valuable input to the development of the interview questions.

4.13 Validity and Reliability

Validity is the extent to which the research findings accurately represent what is really happening in the given situation. Validity in positivist research is very low while, in phenomenological research, it is considered to be higher. The purpose of the latter is predominantly to capture the essence of the phenomena and extract data that is rich in content (Collis & Hussey, 2009).

Reliability, on the other hand, is concerned with the actual research findings and the overall credibility of these findings. Essentially, if the research was to be repeated again, the same results should arise. The reliability in positivist studies is considered usually to be high while, in phenomenological studies, it is low. Cavanna et al. (2001) states that validity is concerned with whether the researcher measures the right concept whereas reliability is concerned with stability and consistency in measurements. That is, if the same phenomenon is measured more than once with the same instrument, then the same results should be obtained (Mason, 2004).

Validity receives more attention than reliability in qualitative research. The question of validity can be summarised as a question of whether the researchers see what they think they see.

Cavanna et al. (2001) concluded that validity is concerned with whether the researcher measures the right concept, and reliability is concerned with stability and consistency in measurements.

Yin (2003) mentions four tests used to establish the quality of empirical research:

1. Construct validity: establishing correct operational measures for the concepts being studied. To increase construct validity, three tactics are available:
 - i. Use multiple sources of evidence: this tactic is relevant during data collection. To increase the construct validity, the researcher used many source of evidence, such as semi-structured, face-to-face interviews as the main source of data, plus three other sources: documentation, archival records and participant observation, as in the case of this research.
 - ii. Establish a chain of evidence: this tactic again is relevant during data collection.
 - iii. To have the draft case study report reviewed by key informants.
2. Internal validity (for explanatory or causal studies only, and not for descriptive or exploratory studies): establishing a causal relationship, whereby certain conditions are shown to lead to other conditions, as distinguished from spurious relationships.

To increase the validity of the research, the interview questions have been carefully prepared, piloted and refined – Table 4.7 outlines the steps of the case study.

Tests	Case study tactics	Phase of research in which tactic occurs
Construct validity	<ul style="list-style-type: none"> • Use multiple sources of evidence • Establish chain of evidence • Have key informants review draft case study report 	Data collection Data collection Composition
Internal validity	<ul style="list-style-type: none"> • Do pattern matching • Do explanation-building • Do time-series analysis 	Data analysis Data analysis Data analysis
External validity	<ul style="list-style-type: none"> • Use replication logic in multiple-case studies 	Research design
Reliability	<ul style="list-style-type: none"> • Use case study protocol • Develop case study data base 	Data collection Data collection

Table 4.7: Case Study Tactics for Four Design Tests (Yin, 2003, p33)

4.14 Conducting the Case Study

The case study was conducted in Libya during the period of May to October 2010. A total number of 20 interviews were conducted during that period. Four interviews were carried out at the NPC in Tripoli, Libya. Two were carried out at the Ministry of Health, one at the Ministry of Tourism, two at the Ministry of Public Works, two at the Economic Development Board, four at the Ministry of Manpower, Labour and Training, one at the Prime Minister's Office and four at two BP Congress meetings. The researcher also attended two BP Congress sessions and one GP Congress session in January 2010.

The interviewees represent four Ministers out of the 12 in Cabinet at the time; 12 senior members of the NPC; two BP Congress Chairs, and two members of the BP Congress. Membership of the National Planning Council varies from year to year, however, and relates to organisations, not individuals. During the time of this

research, the Council had 20 permanent members and approximately 120 other members from various organisations.

The interviewees were approached prior to the interview and were given a description of the research purpose. Easterby-Smith (2004) highlights that an important factor in conducting qualitative interviews is to develop trust between the researcher and the targeted interviewees. The researcher was acquainted with most of the interviewees because of past employment. The researcher had initially targeted all 20 of the permanent members, prioritising certain members: the Minister of Public Works, the Minister of the Council and the Director of Strategy and Policy at the Council were identified as high priority. The Minister of Public Works was prioritised because of the vast amounts spent on public procurement. The Minister of the Council and the Director of Strategy were also prioritised as they are the most senior at the NPC.

All the interviews were conducted in the Arabic language. During the interviews, the researcher took notes and did not attempt to ask to record the interviews due to cultural stigma and the researcher's personal experience with Libyan etiquette. Notes from the interviews were later converted into a computerised text document and table.

The time allocated for each interview varied. On average, the interviews were approximately one hour in length. During the interview process, the interviewer had the opportunity to collect other sources of evidence relevant to the study, such as minutes of meetings, regulations and legislation, and organisational charts.

4.15 Data Analysis

As illustrated in Figure 4.3, Saunders et al. (2007) state that, because of its nature, there is no standardised approach to the analysis of qualitative data. Bryman notes:

“Clear-cut rules about how qualitative data analysis should be carried out have not been developed”

Bryman (2004, p398)

Yin (2003) mentions that the overall goal in data analysis is to treat the evidence fairly, produce compelling, analytic conclusions and rule out alternative interpretations.

It has been identified above that reliance on qualitative data will be required for this particular research; as qualitative data is vast and differences are great, its analysis also differs.

Although there is a lack of a standardised approach, the approaches do possess some common features; Miles & Huberman (1994, as cited by Robson, 2007) list them as a ‘fairly classic set of analytical moves’:

- Giving codes to the initial set of materials obtained from observation, interviews, documentary analyses.
- Adding comments, reflections or keeping memos.
- Going through the materials to identify similar phrases, patterns, themes, relationships, sequences, differences between sub-groups, etc.
- Gradually elaborating a small set of generalisations that cover the consistencies one discerns in the data.
- Linking these generalisations to a formalised body of knowledge in the form of constructs or theories.



Figure 4.3: Dimensions of Qualitative Analyses (Saunders et al., 2007)

Another attempt to identify the main elements of qualitative data analysis was by Lindolf (1995, as cited by Collis & Hussey, 2003) who mentions four interrelated domains:

1. Process - where the analysis of the data takes place continuously throughout the study.
2. Reduction in data - sorting, categorising and interrelating data by means of coding or placing data in charts or matrices.
3. Explaining - understanding the coherence of meaning and action in the case under investigation.
4. Theory - is the context in which the analysis of qualitative data offers explanations.

Robson (2007) also proposes various typologies linked to the methods of analysis and these are:

- Quasi-statistical methods.
- Template approach.
- Editing approach.
- Immersion approach.

The differences in these approaches can be seen in Table 4.8.

Different Approaches to Qualitative Analyses	
Quasi–statistical approach	Use word or phrase frequencies and inter-correlations as key methods of determining the relative importance of terms and concepts. Typified by content analysis.
Template approach	Key codes are determined either on an <i>a priori</i> basis (i.e., derived from theory or research questions) or from initial read of the data. These codes then serve as a template or bins for data analysis, the template in this case could be changed as analysis continues. Typified by matrix analysis, where descriptive summaries of the text segments are supplemented by matrices, network maps, flow charts and diagrams.
Editing Approach	More interpretive and flexible than the above. No or very few <i>a priori</i> codes used.

	Codes are based on the researcher's interpretation of the meanings or patterns in the texts. Typified by grounded theory approaches.
Immersion Approaches	Least structured and most interpretive, emphasising researcher insight, intuition and creativity. Methods are fluid and not systemised. Close to literary/artistic interpretation and connoisseurship (i.e., calling for expert knowledge and targeted at a similarly skilled audience). Difficult to reconcile with the scientific approach.

Table 4.8: Different approaches to qualitative analyses (Robson, 2007)

The value of the analysis of qualitative data depends on the quality of the researcher's interpretation (Collis & Hussey, 2003). Collis & Hussey (2003) mention various criteria that can be used to evaluate a phenomenological study, which could be used to assess the quality of an analysis. Lincoln & Guba (1985, as cited by Collis & Hussey, 2003) suggest that four criteria can be used:

- **Credibility:** this demonstrates that the research was conducted in such a manner that the subject of the enquiry was correctly identified and described. Credibility can be improved by the researcher's immersion in the study for a prolonged period of time, by persistent observation of the subject to obtain deep understanding.
- **Transferability:** this is concerned whether the findings can be generalised to another situation.
- **Dependability:** illustrates that the research process is systematic, rigorous and well-documented.
- **Conformability:** if the study has described the research process fully, allowing assessment on whether the findings flow from the data.

According to Yin (2003), there are five analytic techniques used for case study analysis:

1. **Pattern Matching:** pattern matching logic is to compare an empirically based pattern with a predicated one. If the case matches the predicted patterns then the case supports the theory in the same way as successful experiments

support a theory; if the pattern coincides, the results can help a case study to strengthen its internal validity.

2. **Explanation Building:** the goal of this technique is to analyse the case study data by building explanations about the case. Yin (2003) suggests that, in explanation building processes, the findings are compared to any statement or proposition created.
3. **Time-Series:** Yin (2003) argues that if the events have been traced in detail and with precision over time, the time-series analysis technique may be possible.
4. **Logic Model:** The logic model deliberately stipulates a chain of events over an extended period of time. The events are phased in with a repeated cause-effect-cause-effect pattern, whereby a dependent variable (event) at an earlier phase becomes the independent variable for the next phase. This process can help define the sequence of programmatic actions will accomplish the goals (Yin, 2009).
5. **Cross-Case Synthesis:** cross-case synthesis is a technique especially relevant to a research consisting of at least two cases. This technique treats each individual case study as a separate case (Yin, 2009).

4.16 Data Analysis Process

In this research, the researcher uses the following process for data analysis:

- Translating the interview transcripts from Arabic into English.
- Reading through all interview transcripts, notes, documents and other sourced data, to acquire in-depth understanding of the data.
- The researcher categorises the collected data into meaningful categories developed from the interview questions. This process revealed six main categories.
- Unitising the data, i.e., attaching relevant bits or chunks of data (referred to as units of data) to the appropriate category or categories as mentioned previously. A unit of data could be a number of words, a sentence, a paragraph or sometimes a complete answer for a particular question asked in the interviews that fit the category. During this stage of the analytical process, the researcher will begin to

reduce and rearrange the data into a manageable and comprehensive form (Easterby-Smith et al., 1991 and Saunders et al., 2003).

After completing the process, the researcher will continue to explore key themes and patterns or relationships among the data units. In addition the researcher will consult other sources of data collected during the fieldwork, such as reports, notes taken during participant observation and any other relevant archival resources. This will be for the purpose of triangulation and to enhance clarification of the issues and themes under investigation.

4.17 Chapter Summary

This chapter has provided an in-depth account of the research methodology employed in this study. Based on the aim, objectives and research questions, the phenomenological philosophy was chosen as the most appropriate research approach. The approach is inductive in nature with no predetermined hypothesis. A case study has been used as a vehicle to realising the research aims and objectives. The data was collected by using face-to-face semi-structured interviews as a main source of evidence. The primary data is also triangulated via document review, direct observations and archival records. Data analysis follows the pattern matching rules. Table 4.9 illustrates the research objectives, questions their underpinnings in the literature, and data sought.

Research Aim: What are the barriers that influence, directly or indirectly, procurement policy development in the Libyan context? How are these barriers influencing procurement policy development and why do they exist?			
Chapter 1 Aims:	Chapter 1 R. Questions	Literature (Chapter 2)	Chapter 5 Data
To review the relevant literature on public procurement policy and add to the existing general research on public procurement policy development.	How does public procurement policy development in Libya compare with other procurement regimes?	<ul style="list-style-type: none"> -OECD/DAC (2006) -World Bank CPAR, 2006 -Differences between private and public procurement policy (Knight et al., 2007) 	- Literature review (Chapter 2)
To critically analyse procurement policy development in the Libyan context.	How is public procurement policy developed in Libya?	<ul style="list-style-type: none"> -Internal and external factors that influence public procurement policy development (Thai, 2001) -Unclear and opaque rules, outdated practices (Garcia, 2009) -Stringent boundaries of policies and guidelines (Matthews, 2005) 	<ul style="list-style-type: none"> -Different perspective on public procurement policy development. However, most of those who claimed to have knowledge about its development were affirmative in their response that policy is a people's decision through Congress -Public procurement policy is outdated and old -Public procurement policy requires reform -Public procurement policy is often open to misinterpretation -Corruption is widespread due to outdated procurement policy and low public salary

			scales
To explore how and why procurement policy and strategies are developed in Libya.	Why are procurement policies developed? Do they consider non procurement goals, socio-economic, political policies?	<ul style="list-style-type: none"> -Procurement discrimination (Evennet, 2003) -Cartels, equality of treatment (Garcia, 2009) - Internal and external factors (Knight et al., 2006) 	<ul style="list-style-type: none"> -Ambiguities in institutional roles and remit -Lack of coordination (island institutions cause to overlap) -Lack of unified government policies -Reform required in policy harmonisation -Libya 2020 lack of strategy towards public procurement policy -Political obstacles exist -Administrative obstacles exist, i.e., incompetence
To investigate integration of the procurement policy with the wider government vision.	How is procurement policy monitored and updated? Are they based on present and future needs and fit within the overall wider government strategies?	<ul style="list-style-type: none"> -GPA agreement on international trade (WTO, 2012) - Barriers to GPA (Evennet, 2003) 	<ul style="list-style-type: none"> -Lack of clarity in remit of both the NPC and the EDB -Lack of information available -Lack of integrated database and statistics -Ad hoc policy implementation leading to reactive fire fighting in policy

Table 4.9: Research Chart/Map

5.0 Findings

The aim of this chapter is to present the primary findings of the empirical investigation carried out within the case study organisation, the National Planning Council (NPC) of Libya. The main source of evidence was face-to-face semi-structured interviews, supplemented by documentation and archival review, laws and directives, and other material provided to the researcher by the interviewees. The data from the case study observation are also used to triangulate the data gathered from the interviews.

The data were analysed to answer the research questions: (a) what are the influencing factors that directly or indirectly affect procurement policy development in the Libyan context, and (b) how do these barriers influence procurement policy development and why do they exist?

As a qualitative research study, the researcher relied on a combination of both interviews and secondary sources of documents to address the objectives set and answer the research questions. A total of 20 interviews were conducted during the period of May to October 2010. Four interviews were carried out at the NPC in Tripoli, Libya. Two at the Ministry of Health, one at the Ministry of Tourism, two at the Ministry of Public Works, two at the Economic Development Board (EDB), four at the Ministry of Manpower, Labour and Training, one at the Prime Minister's Office and four at the Basic People's Congress (BP Congress) meetings. The researcher also attended two BP Congress sessions and one General People's Congress (GP Congress) session in January 2010. The data collected from these research activities were analysed in the context of the experiences of the participants and that of the observation of the researcher.

The interviewees represent four Ministers out of the 12 in Cabinet at the time, 12 senior members of the NPC, two BP Congress Chairs, and two members of the BP Congress. During the time of this research the Council had 20 permanent members and approximately 120 members from various organisations.

The time allocated for each interview varies as this was affected by the discretion of the interviewees. On the average, the interviews were approximately one hour. During the interview process, the interviewer had the opportunity to collect from the

interviewees other sources of evidence relevant to the study. These are: (a) Administration Contracts Regulation (Public Procurement Policy); (b) Law No. 13 - NPC Scope and Terms of Reference; (c) NPC minutes of the Administrative Contracts Regulations (ACR) annual meeting/report; (d) the Monitor Group National Competitiveness Report, and (e) the Libya 2020 Report.

5.1 Interview Questions

The interview questions were developed by the researcher to address the research aim and objectives. These were developed from various literature sources, the majority of which is based on the literature review summarised in Table 5.1.

Interview Questions	Author
1. How is procurement policy developed? 2. Who of the NPC members are consulted? 3. Does it take shape in the form of people's decisions as with other policies?	OECD DAC, 2006
4. How does the procurement policy reflect and fit within wider government strategies?	Thai, 2001 Knight et al., 2007 OCG, 2007
5. How are users and other stakeholder's opinions taken into account in policy formation? Examples include private enterprise, local government, procurement managers, etc.	Schapper, 2006
6. How does the NPC capture, analyse and use data from market research in Congress meetings to update or amend policy? 7. How and on what basis are policies then updated or amended?	Walker, 2007
8. Libya has recently applied for WTO accession; what, in your opinion, are possible positives and negatives in the current national state procurement policy? And why? 9. And how can they be amended?	Evenett, 2003 WTO, 2010
10. In your particular organisation /GP Congress, is there a procurement function? 11. How many people work in procurement and how does their role fit within the organisation's wider strategic decisions?	Matthews, 2005 Callender, 2006

5.2 Coding

A code in qualitative analysis is most often a word or short phrase that symbolically assigns a summative, salient, essence-capturing, and/or evocative attribute for a portion of language-based or visual data (Saldana, 2012). The researcher in this case has used codes to refer the various members of the NPC, Cabinet Ministers, and Chairs of the BP Congress. The following codes were used:

- Ministers: *MI-M4*
- Senior Members of the NPC: *NI-N12*
- Basic People's Congress: *BI-B4*

5.3 Data Analysis and Organisation

The data organisation of the present study involved the identification of thematic categories that emerged from the thematic analysis conducted for this study. Thematic analysis, as used in the present study, allowed the researcher to identify the significant elements or thematic categories, manifested themes, and the emergent attributes emerging from the responses of 20 participants from the NPC. The thematic categories were counted from the interviews of the participants representing the answers to the interview questions posed for the research. These categories of themes emerged from the responses of the 20 participants, which allowed the development of the descriptions of the case study phenomenon of the development of procurement policy within the context of Libya.

The researcher used NVivo qualitative software in sorting the terms and phrases that were commonly mentioned in the responses of the participants. These terms and phrases were summarised in composite descriptions, which were then counted to determine the relevance of the descriptions to the current understanding of the phenomenon. The composite descriptions of the thematic categories and themes that were relevant in the current study were:

- (a) System of policy development in Libya.
- (b) Policy harmonisation strategies.
- (c) Stakeholders' participation in policy formulation.
- (d) Policy development, monitoring, and evaluation.

- (e) Influencing factors on policy development.
- (f) Status of procurement policy implementation.

These thematic categories are described in the subsequent sections.

5.4 Thematic Categories and Themes

5.4.1 Public Procurement Policy Development

Question number one was asked by the researcher to establish how state procurement policy is developed. Based on the responses of the participants to the research question, five themes emerged, constituting a description of the system of policy development in Libya. These themes are: (a) *Citizens possess supreme power to raise issues and thereby propose solutions*; (b) *Government agencies have the mandate to respond to national and sectoral issues through policies*; (c) *Policies are acted upon through government planning and consultation with the people*; (d) *Congressional members represent the voice of the people*, and (e) *Constitutional policies are results of people's decisions represented by their representatives*. Table 5.2 outlines these themes.

Thematic Categories/Constituents	No. of participants to offer this experience	% of participants to offer this experience
Citizens possess supreme power to raise issues and thereby propose solutions	19	95%
Government agencies have the mandate to respond to national and sectoral issues through policies	19	95%
Policies are acted upon through government planning and consultation with the people	19	95%
Congressional members represent the voice of the people	19	95%
Constitutional policies are results of the people's decisions represented by their representatives	19	95%

Table 5.2: Thematic Category 1: System of Policy Development in Libya

The first theme, *Citizens possess supreme power to raise issues and thereby propose solutions*, emerged from the beliefs of the participants that policy in Libya is formulated by the people and for the people. All responses of the participants reiterated that the power of the state to execute policies depends on the demand of the people and the assumed needs of the general public.

For instance, the participants articulated that their constituents raised the matter of policy reform. The majority of the interviewees mentioned that procurement policy was an area that required reform. The researcher was provided with minutes of NPC meetings, which highlighted that the permanent members of the Council have raised the issue of procurement policy as an area that should be addressed. One interviewee (N1) mentioned that the majority of laws and regulations were adopted from Egypt and were, in fact, 30 years old:

'Most of the laws and regulations, including the current procurement policy, are very old, and have not adapted to changing times, most of our laws in Libya are from Egypt, some of which are over 30 years old with various amendments here and there, that's all. Some policies are passed by the government due to urgency in theory, ministers are in place to execute policy developed by us and voted upon through the People's Congress; some are not.'

M1 mentioned that procurement is an area that is currently under scrutiny and revision:

'We do not, as a Council, develop policy as such, we merely suggest policy; it is the people's choice then on whether to adopt them or not at Congress. The procurement policy is an area we are currently looking at and revising, especially with the development budget being set at 150 billion for the next five years; this is an area we shall be looking into with our members.'

The second theme, *government agencies have the mandate to respond to national and sectoral issues through policies*, has consistently been found in various government documents and in the responses of the participants. The legislative system in Libya has been designed to involve the people in identifying, planning and resolving issues of national concern. As such, the third theme, *policies are acted upon through government planning and consultation with the people*, emerged, emphasising the presence of technical staff in planning and consulting the people regarding the appropriateness of any policy interventions.

In so doing, the government emphasised the role of congressional members and the sectoral representatives in *representing the voice of the people*. Their representations mandated them to review existing systems, identify issues and resolve the issues through policies. This theme is also linked to the fifth theme; *constitutional policies are the results of people's decisions represented by their representatives*.

The researcher then went on to test further the opinions of the various interviewees by asking which of the NPC members were involved in the policy development and decision-making process of public procurement policy, and whether or not it was a people's decision as stipulated by Law No.1 (1979), the de facto constitution and governance model adopted by Libya over the past three decades.

Ten out of the 20 interviewees did not seem to know whether the ACR was, in fact, a people's decision through the GP Congress. However, the remaining ten made it very clear that all policy development is based on people's decisions from the BP Congresses and voted upon in the GP Congress. M2 stated that:

'The system of Jamahiriya operated through People's Congresses, which were regulated by Law No. 1. The finance system was also established under Law No.1 and various decrees of the General People's Congress. All policy is taken by the people and executed by popularly elevated ministers at the General People's Committee.'

This was further confirmed by B1 who stated that:

'At the BP Congress level, we ensure that decisions from the GP Congress level are implemented, for example, education, that means implementation of the national curriculum. The Secretary of a BP Congress would have to ensure this is taking place. If there is a deviation from the Congress decision, then BP Congress and audit bodies will report. The floor is open to all Libyans to raise issues and questions and thoughts about various government policies; all BP Congresses then send reps to People's Congress and vote on various policies. All policies are made by the people, the procurement policy too.'

It was observed by the researcher that the interviewees were more than happy to openly discuss technical aspects of procurement policy and its implementation. However, when quizzed about its development and whether or not 'people's authority' was in fact practised, the researcher was met with firm affirmations to the Third Universal Theory and the People's Authority as the system of governance.

Based on the themes constituting the first thematic category, a sub-thematic category has been identified. These themes constitute the *challenges in the policy development*. The first theme under this category articulates the *necessity of amending policies due to obsolescence*. An NPC member (N2) stated that:

'The Council has monthly meetings and accepts proposals from various members, the matter of procurement is one we are currently revising and our findings have been passed on to Congress in Sirte, no reform plan as such has been initiated though.'

It seemed clear to the researcher that most interviewees all somewhat agreed in principle that the procurement policy was viewed as being outdated. One further element that emerged from question one was that procurement policy is also open to misinterpretation, as mentioned by N9:

'The procurement policy is old, and open to interpretation as some see fit, the most popular aspect of the health ministry is procurement.'

This was also the view of another NPC member who mentioned that, due to the obsolescence of procurement policy, it has become a cause of corruption as well as ethical misconduct. A further interviewee stated that the majority of laws and

regulation in the public sector are old and outdated and mentioned that this was also a factor that leads to corruption in public procurement. N7 stated:

'Problems with the Civil Service is a huge problem with stability, outdated regulations, outdated laws, outdated job descriptions, all in need of modernisation, outdated salary schemes and low pay rates lead to corruption in procurement.'

This was further affirmed by NPC member (N5) who also acknowledged that corruption is a widespread problem within the public sector and that, although Libya is moving to reform many aspects of its public sector, public procurement needed to be further addressed:

'We are moving towards various reforms and the procurement policy should be looked at further, public procurement is problematic and corruption is widely spread throughout government in kickbacks and commissions'

However, a unique political environment has been noted by the researcher during the conduct of the interview. It was noted that those who identified themselves as part of Seif Islam Gaddafi 'Libya Tomorrow' political camp were more sceptical about procurement policy development, and insisted on using the term 'in theory' when referring to policy development processes within the Libyan system of governance. There was an apparent difference in tone and stance when the matter of 'people's authority' was raised amongst the two political camps. Those seen to be from the 'old guard' were firm in their politically correct views and used various examples of rhetoric from the Green Book and quotes from Col. Gaddafi. Although the distinction between the two groups at the time was never explicit, the researcher was aware of the different camps and its members within the NPC and wider government institutions.

Table 5.3 details the challenges in policy development within the context of the Libyan government.

Thematic Categories/Constituents	No. of participants to offer this experience	% of participants to offer this experience
Majority of current policies are outdated	13	65%
Amendments of policies require national budget appropriation	10	50%
Prioritisation of policies to be amended	9	45%
Success of amending policies require active participation and advocacy	5	25%

Table 5.3: Challenges in Policy Development

5.4.2 Policy/Strategy Harmonisation

Question two was posed to the interviewees to assess how procurement policy reflects and fits within other wider government strategies (i.e., to what extent non-procurement goals and other wider social, economic or political policies are taken into consideration). This question illustrated mixed knowledge or, to be more precise, mixed opinion from the various interviewees.

Whilst there were conflicting responses from the participants, the first theme *necessity of policy amendment particularly the outdated laws* emerged to be the first step in harmonising policies in Libya. Although some of the NPC members and both the BP Congress Chairs affirmed that procurement policy works in harmony and in conjunction with the wider national interests and strategies, some did mention the exact opposite. N5 mentioned that:

‘Everyone does their own thing, no coordination between government departments and overlapping is common place. Politics has a major role, but administrative issues are also vast. We need a united strategy for Libya.’

However, it can be noted that these conflicting views emerged from their views that procurement policy currently implemented in Libya is an obsolete version requiring further amendment. For instance, economic policies set at the international level results in significant foreign investment but also results in the public sector spending heavily on various projects, mostly on infrastructure. If appropriate mechanisms in procurement are in place, unnecessary expenditures can be controlled and thus curb corruption. A member of the NPC responsible for public works mentioned that Libya

is changing, and this and other policies should follow suit. M2 stated:

'At the moment we have raised the issue to review the procurement policy, we held one meeting in Sirte at the Congress, and are writing a memo. We need to change it, it does not fit with Libya now.'

This was further affirmed by another NPC member who suggested that, although in the past procurement policy fit within the wider government policies, it no longer reflected the interest of the people. M1 mentioned that:

'It doesn't now and there is urgent need of change. We have held talks with various ministers especially focusing on public works and are in the process of writing a memo for Congress and raise the issue further at Congress session.'

The researcher was referred to the Libya 2020 vision report. The report was provided to the researcher. Although the report does not refer to public procurement policy explicitly, it does mention the need for public financial management reforms to be introduced in the public sector over the next decade, which would include public procurement. N9 mentioned that the procurement policy should be in line with the various proposed reforms in the public sector and that it should be included in the Libya 2020 strategy. In his words:

'There needs to be a unified goal so that all government departments work together. The procurement policy is old and needs to be updated as it does not fit with the wider government strategies such as Libya 2020.'

Indeed some interviewees had different views. In their opinion, procurement policy is very much entwined with wider government policies and therefore is fit for purpose.

Further responses from the interviewees indicated the themes *involvement of academia and other specialists, mutual understanding regarding working together, and consultation with people*. These themes emerged from the responses of the interviewees who responded that their role is not to develop the policy. They highlighted this by making the distinction in roles of the NPC and the various ministries by stating that it is the GP Congress that makes policy and that they merely initiate it and implement it once it has been approved by Congress. N8 mentioned that:

'Policy development is not our role, we execute what the people want, things are changing and there is a strategy for Libya and all are working towards this.'

The role of the NPC is to ensure that policies such as procurement are in harmony with other state policies. This is one of the remits of the NPC, as stipulated by Law No. 13 (2005). This was affirmed by an NPC member who states that the role of NPC is to coordinate and ensure that government policies work together, highlighting the need to make sure no overlap occurs in policy development.

One NPC member (N3) who is also connected with an institute that provides experts in various related areas including public procurement to the NPC, argued the following:

'We, at the academy, work as a sounding board for policy initiatives for Congress. We focus on specific areas and allocate specialists in the area to propose ideas. All policies are reviewed every year and all work together.'

This was also affirmed by another NPC member (N10) who mentioned that:

'The government always works together, we work closely with various people from different General People's Committees to always make sure we are one hand.'

Although some interviewees did mention that procurement policies are in harmony with other wider government policies, it was very apparent and obvious to the researcher that this was not necessarily the case. As such the theme, *harmonisation strategies are yet to be explored* emerged. This was confirmed by the interviewees who did mention that this is not the case and that there are overlaps in responsibilities and remit. The EDB (which is a member at the NPC) seems to be encroaching on the NPC remit. One NPC member from the EDB mentioned that the Board is working on to take on the role of policy monitoring and harmonisation.

From the views of the interviewees, the theme *alignment of policies with human resource capabilities* emerged as a necessary step in aligning these policies appropriately. The interviewees highlighted the development of competence of these staff to effectively harmonise these policies. This has been demonstrated in the case of M4 who said that:

'I'm not a procurement specialist but it's working, although we have problems

mainly in finance, paying internationally...Our main problem is with hospitals not in the city, we have the money to buy equipment, but no people to work there.'

From these themes, the researcher noted the political environment that shapes Libya: (a) ambiguities in institutional roles and remit; (b) lack of coordination - island institutions cause overlap; (c) lack of unified government policies; (d) reform required in policy harmonisation; (e) Libya 2020 strategy not including public procurement policy; (f) political obstacles exist, and (g) administrative obstacles exist (i.e., incompetence). Table 5.4 outlines these themes.

Thematic Categories/Constituents	No. of participants to offer this experience	% of participants to offer this experience
Necessity of policy amendment particularly the outdated laws	16	80%
Involvement of academe and other specialists	12	60%
Mutual understanding regarding working together	11	55%
Consultation with people	10	50%
Alignment of policies with human resource capabilities	6	30%
Harmonisation strategies are yet to be explored	2	10%

Table 5.4: Thematic Category 2: Policy Harmonisation Strategies

5.4.3 Stakeholder Participation in Policy Development

The interviewees were asked in question three how user and other stakeholder opinions were taken into account in policy formation. Some examples include private enterprises, local governments, and procurement managers among others.

The majority of the interviewees made it clear that, due to the uniqueness of the governance system in Libya, all stakeholders are involved in procurement policy development. B2 commented:

'The Libyan people are the stakeholders; they come from all walks of life, doctors, lawyers, shopkeepers, mechanics, they are all part of the BP Congress and all are part of the policy process and making decisions for the country.'

The themes constituting the thematic category of *stakeholder participation in policy formulation* suggests that the process involves *BP Congress representations, involvement of consultants and/or specialists, active role of academe in policy studies, and sectoral representations*. An NPC member explained how other government institutions (i.e., ministries) are represented at the NPC. M1 stated that:

'As the Council houses members from all the various sectoral GP Committees, the NPC is representative of all views and sectors, we hold four main meetings per annum with them and other meetings with various government departments and academics, depending on reports and ideas we get from them. Private enterprise is not represented in the Council, however, we hold meetings with the Libyan businessmen's Council and the Chamber of Commerce which represents the private sector now.'

A member of the NPC from the EDB mentions that allowing private enterprise participation in procurement policy decisions is a new thing. N4 mentioned that:

'Previously there was no interaction between the government and the private sector. Now the government organises various meetings, conferences and seminars with investors and business people with a view to improve the investment and business environment, the EDB supports and facilitates this.'

This is indeed true, and was observed by the researcher at the time of the fieldwork in Libya, where the EDB did facilitate various conferences with the NPC and the Congress. An example of this would be an audience with Col. Gaddafi and Seif Islam Gaddafi who opened the floor to various business people from around the country to discuss issues of tax, the economy, procurement and financial regulations. The event was aired on national television and was seen as a major step forward from the anti-capitalist rhetoric of the past three decades.

Further responses to interview question three highlighted that government institutions were receiving support from international organisations. NP10 who is a member of Public Works stated that:

'...in our work we use international consultants when looking into areas of development needed, many international companies work with us, in construction and planning, our studies are then passed on to GP Congress for approval.'

This was further highlighted by another NPC member (N5) who also stated that international consultants were used extensively in policy development in Libya. The Libya 2020 vision report was developed by various studies carried out by international organisations, namely the Monitor Group, which was led by Michael Porter at the time. He was also involved in developing policies for diversifying Libya's economy. However, public procurement is not mentioned in this report.

The theme *establishment of a structure that accepts policy proposal* emphasised Libya's governance structure or direct democracy approach to policy development, which considers Libyan citizens as stakeholders. Arguably, since they are all represented at the BP Congresses, then in theory they are all part of the policy development phase of procurement.

Question three has shed light on a number of issues, the first of which is the idea that the NPC is open to international assistance on policy development in general. Although this was not true in the case of procurement specific policy development, it still indicates a more flexible posture in terms of allowing intervention in areas that once were deemed as strictly sovereign. Another point noted from question number three was that the interviewees responded with a sense of pride in that every citizen was involved in policy development.

The theme *regular conduct of meetings to convene for prioritisation of policies* also emerged in the analysis, which reflects the intention of the government to involve various stakeholders. The researcher had attended two BP Congresses and one GP Congress during the time of this research and various others prior to that. However, it should be noted that during all three of these sessions, public procurement was raised directly in terms when the development budget was discussed (Capital Expense Budget). Other policy areas discussed were civil service salaries, employment, and public spending on public works. The atmosphere at the BP Congress is not conducive to a forum where one could actually discuss and vote on public policy that would inevitably affect every citizen's life. Nevertheless, limited discussions took place and votes were made on the areas mentioned above. The GP Congress was very different from the BP Congress, as it was a voting platform where all Chairs of BP Congresses would vote on policies and government.

Based on these themes, the researcher highlighted the case of involvement of stakeholders in the policy formulation. These include: (a) poor mechanism for policy development at the BP Congress; (b) international expertise is sourced in policy development; (c) citizens may not know what is at stake if they are allowed to vote on highly technical areas such as public procurement policy, and (d) private sector participation is now embraced by the state in public procurement policy development. Table 5.5 outlines these themes.

Thematic Categories/Constituents	No. of participants to offer this experience	% of participants to offer this experience
BP Congresses represents the people's voice	18	90%
Involvement of consultants and/or specialists	17	85%
Active role of academia in policy studies	16	80%
Sectoral representations in policy formulation	12	60%
Regular conduct of meetings to convene for prioritisation of policies	12	60%
Establishment of a structure that accepts policy proposal	11	55%

Table 5.5: Thematic Category 4: Stakeholders' Participation in Policy Formulation

5.4.4 Policy Monitoring

Question four asks the interviewees how the NPC captures, analyses and uses data captured by market research and Congress meetings to update or amend policy and how, and on what basis, policies are then updated and amended. The purpose of this question is to establish a picture of what mechanisms are in place at the NPC as the state's policy initiator to monitor and update procurement policy to keep up with changing laws, institutional arrangements, regional agreements and international agreements. Whilst this is again one of the featured remits of the NPC, the EDB is also claiming a role in this. The continuous struggle for responsibility and authority between the two organisations was very much visible to the researcher during the research.

Six themes emerged in the analysis constituting the thematic category *policy development, monitoring and evaluation*. These themes include: (a) conduct of regular meeting with sectoral representatives; (b) conduct of policy evaluation studies; (c) each legislative committee has a research policy department; (d) involvement of private companies and other stakeholders in policy implementation, monitoring and evaluation; (e) NPC accepts policy proposals, reviews and submits to Congress, and (f) policy issues and proposals are submitted to NPC for review.

M1 mentioned that there are various subcommittees that meet frequently, addressing various areas of concern. He argued:

'The Council meets four times a year and has a small full-time staff of approximately 50 with many responsibilities. Council staff are divided into two types: technical/research employees and administrative employees who are responsible for 'following up' with Council members and their subordinates on proposals and matters raised from BP Congresses or GP Congresses that require attention. The Council subcommittees meet more frequently, especially regarding pressing matters.'

The interviewees were all in agreement that this role was in fact part of the NPC's major responsibilities within the government structure. This is apparent in Law No. 13 (2005) and was affirmed by all NPC members. N1 stated:

'the NPC is relied upon to submit follow-up reports on budgets for example, and is in fact the primary support on the 'follow-up' function. It is a challenge sometimes to draw the line between 'macro' and 'operational' policy decisions. With regards to procurement policy, we have, as mentioned, started to raise the issue with Congress, but nothing has been done so far on the matter.'

That said, there is (as mentioned above) a lack of clarity on the roles of the NPC and EDB, even though arguably the EDB member at the NPC mentions that they monitor policies that are specific to the economic progress of the country which implies that they do not necessarily cover the entire scope of the NPC. N4 mentioned that:

'One of the main remits of the EDB is to analyse and keep up to date with the various policies that affect the economic progress of the country. Concerns are then addressed and passed on to the relative GP Congress, bigger issues go to NPC which we work very closely with'

Whilst the function of procurement policy monitoring lies within the remit of the NPC, the underlying issue as mentioned by various NPC members is the lack of information and statistics available. This was indeed something that the researcher had sought during the research; information is not readily available and, in most cases, it does not exist. It should be noted that it was extremely difficult to obtain laws, directives and various other information on state procurement policy. M2 from Public Works stated:

'We have a problem in statistics, information is key, we do meet with our shabeyas on a regular basis to establish and identify problems and areas where improvements can be made with regards to our sector, these are then passed on to the NPC for study or, if of national importance, direct to the PM and Congress.'

This was also further affirmed by the NPC member responsible for IT for the Public Sector (N11) and the newly initiated e-government programme. He mentions that the problem with the available information is that it is in isolation and not integrated in an accessible database system. According to N11, the NPC is working on a national integrated database. Another NPC member (N7) mentioned that a further problem is in the policy development stage itself, in that it is reactive:

'I think the problem is in the policy formation itself, because these are usually ad hoc in nature, the policy is developed then the problems arise and then we try to fix the problems, information is weak and statistics are not enough.'

Some of the interviewees mentioned that the mechanism for monitoring and updating policy is carried out with the BP Congress at the Shabeya level (local government); once issues are raised, these are then in turn passed on to the NPC. Table 5.6 outlines these themes.

Thematic Categories/Constituents	No. of participants to offer this experience	% of participants to offer this experience
Conduct of regular meeting with sectoral representatives	13	65%
Conduct of policy evaluation studies	13	65%
Each legislative committee has a research policy department	12	60%
Involvement of private companies and other stakeholders in policy implementation, monitoring, and evaluation	12	60%
NPC accepts policy proposal, review, and submit to Congress	11	55%
Policy issues and proposals are submitted to NPC for review	8	40%

Table 5.6: Thematic Category 5: Policy Development, Monitoring, and Evaluation

Based on the current structure in the policy development, monitoring, and evaluation function of the government, the following issues have been noted: (a) lack of clarity in the remit of both the NPC and the EDB; (b) lack of available information; (c) lack of integrated database and statistics, and (d) ad hoc policy implementation, leading to reactive fire fighting in policy.

5.4.5 Policy Strengths and Weaknesses/WTO Accession

On 27th July 2001, the World Trade Organization (WTO), following the normal procedure for negotiating membership, agreed to set up a working party to examine Libya's application, which was made in December 2001.

WORLD TRADE

ORGANIZATION

RESTRICTED

WT/ACC/LBY/1

10 December 2001

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ACCESSION OF LIBYA

Request for Accession Pursuant to Article XII

The Director-General has received the following communication dated 25 November 2001 from the Ministry of Economy and Foreign Trade of the Government of the Great Socialist People's Libyan Arab Jamahiriya.

The representatives of the Libyan Arab Jamahiriya have attended the 3rd and 4th ministerial conferences of the World Trade Organization and have followed with interest the activities of the WTO.

Having regard to its desire to expand its multilateral trade relations, my Government has decided to request accession in pursuant to Article XII of the Agreement establishing the WTO and is ready to undertake the established procedures.

I request that this application be considered at the next meeting of the General Council and trust that WTO Members will consider the application for the accession of the Libyan Arab Jamahiriya positively.

(WTO, 2009)

As an applicant country, Libya has been an observer to the WTO during the membership negotiation (General People's Committee for Trade and Economy

Decision 2, 2001). It is unclear as yet where Libya stands with its application and it will not be without an elected government in Libya.

The theme *possible benefits of globalisation and trade liberalisation* emerged, which describes mixed feelings about Libya's 'opening up' to international trade and the liberalisation of nation's economic markets. Some interviewees viewed this as an opportunity for job creation, citing the impact of the years of embargos and sanctions placed on Libya during the mid-1980s and most of the 1990s. M2 mentioned that:

'Since the removal of the embargo and trade restrictions, Libya is now moving towards a free enterprise market, or what we call people's capitalism, WTO accession is something we are now striving for along with other international trade agreements, procurement laws and policies will need to change to meet criteria.'

This was further affirmed by another NPC member who also views WTO accession as an opportunity for Libya. N6 stated:

'WTO accession and many other trade agreements is what Libya wants to achieve soon, we need to liberate our markets, create jobs and allow for more prosperity, this is something that Libya has been denied due to the international sanctions and now that has changed we need to make up for lost time and bring Libya up to date with technological advancement such as Dubai, e gov; electronic tendering for example is something that procurement policy does not allow for, because it is old.'

Although there has been some resistance towards market liberalisation over the past decade, the researcher found that WTO accession and the liberalisation of Libya's economy was generally accepted as something that Libya ought to achieve from the interviewees. However, the theme *governments are unprepared for the changes* emerged, indicating a possible barrier to the development of the country.

Libya, in essence, is a socialist state, with Law No.1 (1979) as its underlying legal system and constitution. The Libyan public sector is the largest employer in the country, employing 1.6 million people across its public institutions and its state-owned enterprise. One NPC member emphasised that WTO accession is not

something of national priority, and that there are more pressing demands. N5 stated that:

'I think that it's too early for Libya to pursue WTO accession, we have many other issues we need to face first, our laws and policies are old and need to be updated, the procurement policy has loopholes and does not allow for transparency, it eventually will be updated if WTO accession is going to be further pursued, how it will be amended I don't know, but it will inevitably take a long time and involve a Congress decision.,

These views supported the theme *perceived needs of aligning national policy to that of international government policy*, which suggests the need of the country to prioritise internal political issues before any international venture. This was further affirmed by NPC member M4 who stated that:

'There are things which do not fit with our country, I don't think free trade shall either, for example we do not want mass tourism such as in Tunis or Egypt, we don't need the money as they do so we will not allow for big holiday resorts in Libya.'

The general rhetoric from the interviewees is that Libya should pursue WTO accession and open up to international trade and liberalise its economy to allow for private sector development and ultimately job creation. However, various interviewees indicated that this was either too early, or not a pressing matter that ought to be sought at that time. While various reasons emerged, the general point of concern was that Libya is not ready and that procurement policy and other economic policies in place were not fit for this transition. One NPC member also noted that transparency would be a key barrier to the move towards achieving WTO accession. N7 stated that:

'Procurement policy does not allow for transparent transactions, does not allow for accountability and has loopholes which many department personnel can easily abuse. This is an area of great concern, however the sensitivity of the matter does not allow it for wide discussion and criticism.'

Another NPC member from the EDB (N4) argued that:

'This is something we are watching closely and advising the team involved in the negotiations, we have started a capacity building programme for SMEs in Libya and various other courses in international trade. The procurement policy is very old and outdated as with many other laws that limit the opportunity for free trade which is the corner stone of the WTO.'

Based on these themes, the researcher highlighted key concerns from the interviewees on WTO accession and free trade. These themes include: (a) major step in transition from a socialist to a capitalist economy; (b) WTO accession is seen as too early in this transition; (c) international ventures would not be fit in an outdated procurement policy, and (d) transparency issues in the procurement regime. Table 5.7 outlines the responses to these themes.

Thematic Categories/Constituents	No. of participants to offer this experience	% of participants to offer this experience
Possible benefits of globalisation and trade liberalisation	12	60%
Governments are unprepared for the changes	11	55%
Perceived needs of aligning national policy to that of international government policy	11	55%
Knowledge and skills of policy negotiators	9	45%
Active advocacy of sectoral groups for policy amendments	9	45%
Changes in the social and political environment	4	20%

Table 5.7: Thematic Category 6: Influencing Factors of Policy Development

5.4.6 Policy Implementation

The purpose of question six was to get a clear picture of the procurement environment within the NPC and the member organisations. The researcher initially asked about procurement personnel within the respective organisations and how their role fits within the overall strategic direction of the NPC and respective member institutions.

Five themes emerged constituting the *status of procurement policy implementation* in Libya These include *absence of a procurement department in public offices, procurement is handled by respective offices particularly finance department and*

particularly for small transactions, use of procurement committees to handle large procurement transactions, limited number of competent staff to handle procurement, and hiring of consultants to facilitate the procurement process.

The first theme was supported across the evidence that the procurement function of the government has not been considered a strategic part of the overall organisation of the NPC. M2, responsible for Public Works mentioned that:

'A committee is set from various members of staff when required, we do not have a procurement department as such, because we use different people from different government bodies when assessing bids, depending on the work that is being carried out we select the right people. Small purchases for the ministry are carried out by the admin and finance department along with legal department for drafting contracts.'

All the interviewees stated that they did not have a procurement function as such and procurement was in fact carried out by the finance and legal departments of the NPC and their respective institutions. One NPC member mentioned that procurement implementation was not seen as a strategic function. N7 noted:

'Procurement is an area which is not considered strategic, it is still carried out using old methods, cheapest bid wins and also nepotism has also a big role, it's not organised and sometimes we don't even know how and when it happens when big projects are approved by tendering committees. It's not an area that is openly discussed.'

The researcher also had the opportunity to view various organisational structures at the Ministry of Manpower and Labour, which houses the equivalent of the civil service commission. Records show that none of the Ministries or the NPC has procurement departments.

Question six shed light on some factors that would inevitably affect procurement policy development in the Libyan public sector. Procurement as a function and with personnel does not exist, and ad hoc committees carry out the purchasing function of billions of Libyan Dinars a year. These include: (a) the perception that procurement is an administrative function and carried out by financial and legal departments; (b) procurement methods are traditional; (c) nepotism is a problem in procurement

implementation, and (d) unorganised procurement implementation. Table 5.8 illustrates the responses to these themes.

Thematic Categories/Constituents	No. of participants to offer this experience	% of participants to offer this experience
Absence of procurement department in public offices	15	75%
Procurement is handled by respective offices particularly finance department and particularly for small transactions	12	60%
Use of procurement committees to handle large procurement transaction	11	55%
Limited number of competent staff to handle procurement	11	55%
Hiring of consultants to facilitate procurement process	9	45%

Table 5.8: Thematic Category 7: Status of Procurement Policy Implementation

5.5 Summary

Although the interviewees offered unique perspectives on public procurement policy development, most of those who claimed to have knowledge about its development were affirmative in their response that policy is a people's decision through Congress. The majority mentioned that public procurement policy in Libya is outdated and old and requires reform.

Another finding was that public procurement policy is often open to misinterpretation, which has a direct impact on its transparency and, in turn, increases the possibility of corruption. Another factor which could lead to corruption was that of low public salaries. Review of the secondary data and the interview with the participants of the study reveals that ambiguities in institutional roles and remits do exist. This is particularly true in the case of the EDB and NPC which demonstrates a lack of coordination and overlaps in remits, which led to different government policies that are not necessarily in harmony across government-established structures.

Although the EDB has been working on the implementation of Libya 2020, there remains a lack of strategy regarding public procurement policy and its development as an important political move towards globalisation.

Another finding is the lack of personnel trained in procurement. All interviewees mentioned that they and their respective government departments do not have procurement functions and procurement is handled by either a combination of the finance and legal departments or handled by ad hoc committees that are set up for certain purchases. Across the responses of the interviewees, they affirmed that administrative obstacles exist (i.e., incompetence) such that procurement policy remains under political discussion. Although international expertise is sourced for policy development, there remains a lack of coordination and a haphazard nature of the mechanisms and procedures among and within the government structures. As witnessed at the BP Congress, there are weak policy development processes within the governance system in Libya, especially when it comes to public procurement, and the magnitude of this impact are evident. Furthermore, citizens may not know what is at stake when allowed to actually vote on highly technical areas such as procurement policy.

It was, however, an encouraging finding that the private sector is now consulted and involved in procurement policy and its development. However, during the time of this research no actual changes were made.

The idea of WTO accession was received differently by the interviewees. Some viewed that it was only just short of a capitalist invasion by imperialists in the west, whilst others took a more liberal view in the sense that Libya has to move from a socialist state to a capital state where free enterprise and the private sector can develop and flourish. In the light of the findings, there are also major obstacles that were found that discourages the transition, especially when trying to attract international investment and opening markets to international competition. The problem of transparency is a hurdle and, although not explicitly mentioned by all interviewees, it was clear from those who did bring it up that this could in fact impede Libya's economic progress, growth and reform. Figure 5.1 illustrates the interplay between the themes. (Please see Annex 1 for thematic categories summary tables)

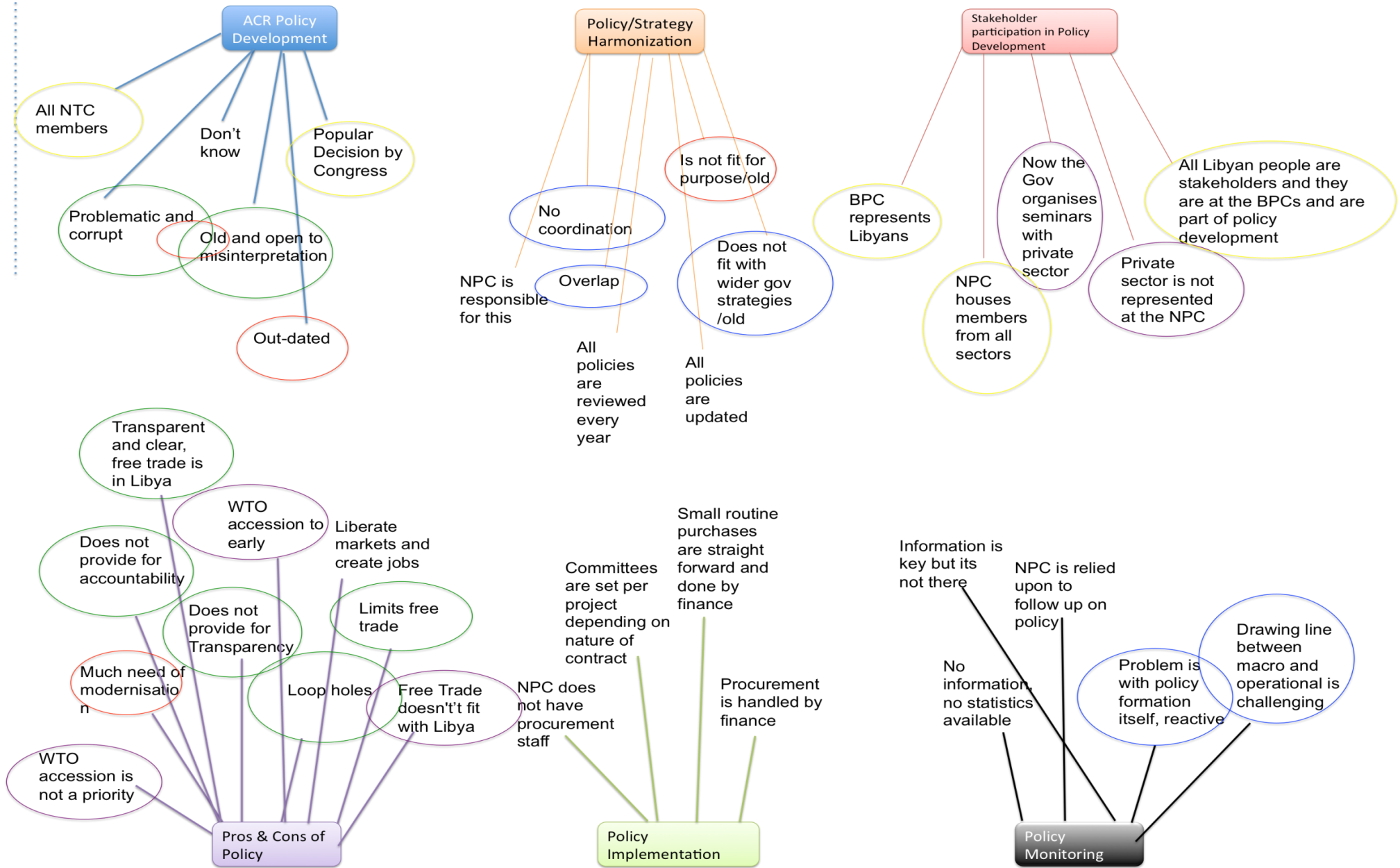


Figure 5.1: Interplay of research themes

6.0 Discussion

The aim of this chapter is to discuss the research findings in light of the various literary sources that have been reviewed in the research. The discussion will initially touch on and identify findings from this particular research, which have been mentioned across the literature, linking the two together. It will then identify research-specific findings that may not have been identified in the literature which are unique to the context of this research.

The structure of the chapter will be in the form of the findings categorised into sections that were extrapolated from the initial research questions and the literature review.

6.1 Public Procurement Policy Development

Prior studies have noted that the management of public bodies is a complex activity that entails the balancing of different, and sometimes somewhat contradictory, objectives (Kamoche, 1997). The relationship between public procurement and good governance has been mentioned in the literature and is gaining increased attention (Knight et al., 2007). Effective procurement, mentions Callender (2007), provides governments with a means of bringing about social, environmental and economic reform and, where malpractice exists within public procurement, it demonstrates a failure of governance. In a democratic system of governance there is a distinctive division of powers between the legislative, executive and the judicial branches of the state but procurement authorities and responsibilities vary among countries (Thai, 2001). In countries such as the UK, policy implementation is carried out by the executive branch of government, i.e., Cabinet, through non-legislative means, i.e., executive orders. In the US, the legislative branch of government primarily influences the public procurement system through legal means, i.e., laws (Thai, 2001). Libya has yet to embark on its democratic transition and, during the time of this research, it was governed by the Third Universal Theory, which in essence is a form of direct democracy. While the Libyan design and system of governing is unique, they are also required to take decisions that balance national objectives and policies within political and social considerations. They are required to manage their decision-making efficiently, as it is only one of the many demands upon the time of political leaders.

Traditional or more conventional cabinet governments operate differently. A typical ‘parliamentary’ governance framework, of which there are numerous variations, assigns responsibilities to an executive and to a legislature, as illustrated in Figure 6.1.

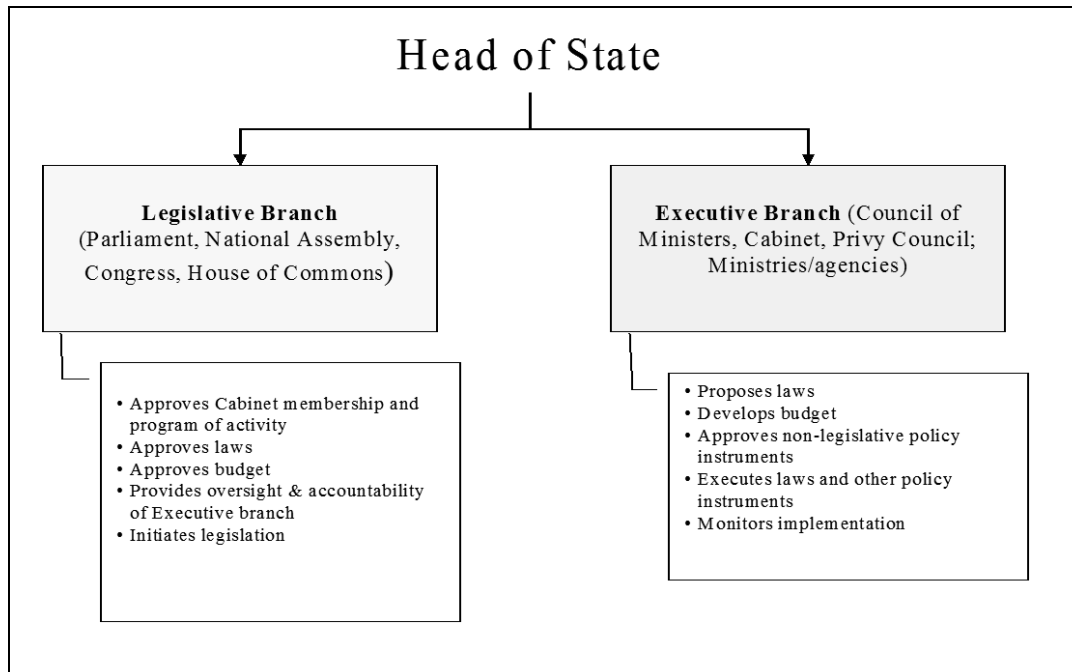


Figure 6.1: Typical Governance Framework (ASI, 2008)

The executive branch develops, amongst others, procurement policies. It approves non-legislative policy instruments, executes laws whilst monitoring their implementation, and accounts to the legislature. The executive branch is much more actively responsible for setting priorities. The legislature is active in terms of reviewing the proposals of the executive and maintaining oversight of executive actions (ASI, 2008). In the case of Libya, and as identified in the findings, it was made very clear that all policy development is based on people’s decisions from the Basic People’s Congresses (BP Congress) and voted upon in the General People’s Congress (GP Congress); the executive branch of government is merely there to implement policy and not to develop it as such. However, the National Planning Council (NPC) functions as the policy initiator that is then either approved or rejected by the BP Congress and GP Congress. Evidently, from the findings during this research, Libyan procurement policy, and policy development in general, suffers from multiple areas of weakness which can be categorised into three main issues:

1. Decision-making and policy are reactive.
2. The process produces decisions, which are not reliable.

Murray (2007) explains that the public sector works within a narrow framework of democratic governance strategy and management, where local people exercise their right to determine how and by whom they should be governed through the ballot box. He continues further to explain that, in turn, those who are elected not only have a representative advocacy role but, are democratically accountable to their electorate for their decisions. Libya is now leaning towards a more traditional parliamentary system and conventional cabinet government, which will undoubtedly look further into reforming the procurement policy and its development. The legal environment, as mentioned by Thai (2001), is also considered as an external factor that influences public procurement; apart from public procurement regulations, the legal environment refers to the broader legal framework of any given country that governs all business activities, and these include financial, environmental and marketing laws, all of which have an effect on the market environment of a country. Thai (2001) mentions that this is an influencing factor, particularly in developing countries or those in transition, where legal systems are not comprehensive. This is particularly true for the case of Libya; the current procurement regulations in place today are those from the previous regime. Many of the laws from the previous governance framework, which were intrinsic to the previous regime, have been abolished; most laws were based on Law No. 1 (1979) of the People's Declaration, a basis of legislation, which has now been abolished.

The finding in this category during the research was that procurement policy in Libya is old and outdated; this was affirmed by most of the interviewees and has been identified as a factor that influences procurement policy development both as an internal and an external factor (Thai, 2001 and CPAR, 2006). The findings revealed that this was cause for misinterpretation and ultimately abuse, and the majority of the interviewees did affirm their support for reform of the procurement regime in Libya. With 25% of Africa's GDP estimated to be lost every year to corruption (Thachuk, 2005 as cited by Estach & Limi, 2011), it is also clearly a major factor that influences procurement policy development. The public procurement function is the most prone to corruption; Thai (2008) and Garcia (2009) mention that public procurement raises

many complex problems; unclear and opaque rules, which are the product of poor public policies, and corruption and inefficiency due to outdated practices.

Another finding, which has been identified in the literature as a further cause of poor procurement practice is low public salaries. Civil service salaries in Libya are governed by Law No. 15 (1981), which stipulates the pay and grading of public servants across the entire public sector without differentiating between local, central or regional government organisations. Seen as a means to further cement the notion of social equality, Col. Gaddafi introduced Law No. 15 in 1981; effectively it outlined the public wage policy, introduced a simplistic hierarchy of 11 steps in the public salary grade, and unified all wages in all public institutions. Since there were no private enterprises during this period, Law No. 15 symbolised the formal income levels of Libya's entire workforce. This had a profound effect on the labour force and radically introduced the concept that all workers had equal wages levels without respect to their profession, responsibility, aptitude and performance. This policy deeply affected the productivity of the Libyan labour force. The impact clearly manifested itself, with poor labour productivity and lack of capacity in the Libyan workforce; Law No. 15 meant that Libyan workers had no incentives to become more productive; on the contrary, those who did seek to become more productive had an inverse incentive working against them. The other impacts were the creation of a parallel shadow economy, and corruption in public administration.

Libya has a very extensive civil service system; it accounts for 70% of the workforce of the country, 1.6 million people (MoL, 2013).

The underlying principle of the civil service in Libya is that all workers are partners and not wage workers, a principle taken from the Green Book (Gaddafi, 1979). It is also stated in Article 1 of Law No. 15 (1981). According to this, all public servants who have the same responsibilities will have the same salary. It also means that all civil servants are partners and equal.

Employment grades in Libya depend on qualifications and background. University graduates start off at Grade 8. Previous experience in public service is also reflected in the determination of their grade. There are 16 grades for civil servants in Libya (GPCMET, 2008). The entry level for the same profession is always the same. Experience in the civil service does count, but not other experience. Therefore, for

example a lecturer or professor with previous experience in a university abroad or private university must both enter at the same level.

There are ten salary promotions for each grade. Allowances for each civil servant include family allowance, residence allowance, overtime allowance, special working circumstances allowances, expenses, and senior positions allowances. Table 6.1 illustrates the payscales in Libyan Dinars (LD).

Grades	Base pay	After all <u>10 salary promotions</u> for the same grade
(Monthly compensation in LD)		
16	708	828
15	618	738
14	528	648
13	468	588
12	408	504
11	372	468
10	324	420
9	276	372
8	234	306
7	204	276
6	174	234
5	156	216
4	144	192
3	126	174
2	114	150
1	102	138

Table 6.1: Monthly Pay and Allowances by Grade (LD)

As illustrated in Table 6.1, public salaries are dramatically low with a graduate salary of approximately £145 per month. Senior civil servants, such as the members of the NTC, who would all be in Grades 11-14 would be remunerated approximately £150-270 per month. It should be noted that, in 1981 when Law No. 15 came into effect, the exchange rate for the US Dollar was 0.26 LD and is now 1.36 LD. The findings do suggest that low salaries could be the main reason for corruption, low capacities, and lack of incentives at the workplace. It is an inevitable consequence of having poorly paid people empowered to make decisions involving large sums of money. However the Ministry of Labour claims that the number of civil servants is too large to allow increasing the existing salaries. The UK Department for International Development (2006) presents a rule of thumb where employment and pay reform is necessary:

- More than 25% of the government budget is devoted to wages and salaries.
- State-owned enterprises are in an unsustainable financial state.
- Recruitment in the civil service is growing faster than GDP, revenue growth or long term trends.

All three of the above mentioned characteristics apply to Libya.

Dobrolyubova (2005) mentions that transparency in public procurement supports a more efficient allocation of public resources and fair competition, thereby contributing to economic development and reducing rent-seeking and corrupt practices.

The UNCITRAL Model Law on Procurement of Goods, Construction and Services seeks to promote international competition in public procurement markets and could potentially curb malpractice in Libya. Sample provisions are set out in Table 6.2.

Process Stage	Mechanisms to Secure Transparency and Accountability (with reference to appropriate Model Law articles)
General provisions	<i>Public accessibility of legal texts</i> , including procurement regulations, all administrative rulings, and directives of general application in connection with procurement (Art. 5)
	<i>Procedures for making records of procurement proceedings available</i> after the tendering procedure to any person and certain documents available to suppliers or contractors that submitted a tender or applied for pre-qualification (Art. 11)
	<i>Form of communications</i> between the procuring entity and suppliers and contractors (Art. 9)
	<i>Language of documents</i> for solicitation of tenders, proposals, offers or quotations
Solicitation of tenders	<i>Publication of invitation to tender or to pre-qualification</i> in: (i) state gazette or other official publication; and (ii) in a newspaper of wide international circulation or in a relevant trade publication or technical or professional journal of wide international circulation (Art. 24)
	<i>Requirements to the notice of solicitation of proposals</i> (Art. 37, para. 1, 2)
	<i>Minimum information to be included in the request for proposals</i> (Art. 38)
Pre-qualification proceedings	Procuring entity will provide a set of prequalification documents to each supplier or contractor that requests them in accordance with the invitation to pre-qualify (Art.7, para 2-3)
	Notification to each supplier or contractor submitting an application to pre-qualify and public availability of the names of all suppliers or contractors that have been pre-qualified (Art.7, para 6)
Evaluation and comparison of tenders	Attendance of contractors or suppliers that submitted bids, or their representatives the procedure of bids opening (Art. 33)
	Only criteria set forth in solicitation documents used for evaluation and comparison of tenders (Art. 34, para 4a; Art. 39, para 1)
Post-evaluation	<i>Public notice of procurement contract awards</i> (Art. 14)

procedures	<i>Right to review</i> - any supplier or contractor that claims to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on the procuring entity by this Law may seek review (Art. 53 – 57)
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Table 6.2: Ensuring Transparency in Procurement Process: UNCITRAL Model Law Provisions

The procurement regime in Libya must be reinforced by effective management systems which clearly allocate procurement responsibilities, and accountability and monitoring systems which ensure that decisions comply with laws and regulations.

6.2 Policy/Strategy Harmonisation

Question two was posed to the interviewees to assess how procurement policy reflects and fits within other wider government strategies, i.e., to what extent non-procurement goals and other wider social, economic or political policies are taken into consideration. This question illustrated mixed knowledge, or to be more precise, mixed opinion from the various interviewees. Whilst some of the NPC members and both the BP Congress Chairs affirmed that procurement policy works in harmony and in conjunction with the wider national interests and strategies, some did mention the exact opposite. The literature does indeed mention that some countries still develop their procurement policies to address only the relatively narrow agenda of value or process efficiency, but others have adopted broader and more strategic policies (Thai, 2009). Arrowsmith (2004) mentions that, traditionally, governments use their extensive power to use procurement as an instrument to achieve a variety of objectives. There are numerous examples of how socioeconomic policies have been supported by procurement. Watermeyor (2008) highlights that, in the US, in order to ensure small and minority businesses secure market share, it uses reservation and supply side schemes. In Botswana, a legislation addition in 2001, allowed schemes to promote Botswanan-owned companies; in South Africa, successful tenderers with certain criteria must participate in the South African economy (Watermeyor, 2008). Procurement as a social policy has been seen where governments seek to meet certain needs of interests groups, such as ethnic minorities, small vendors and local vendors. Procurement as economic policy compensates for the perhaps unfairness in the private sector which tends to be dominated by large organisations and global suppliers. This

is evident in the US, where federal purchases are the most important national economic factors, by providing incentives to suppliers who buy American or produce their goods or services in the state the government. This allows for a boost to the local economy by keeping as much of the supply chain in the state as possible. Procurement is a political tool and the origin of all procurement policy is political (Thai, 2009). It was found in this research that ambiguities in institutional roles and remits were evident and troublesome in procurement policy development, and that the lack of coordination between the various government institutions did, in most cases, cause overlap in remits. Although some interviewees did mention that procurement policies are in fact in harmony with other wider government policies, it was very apparent and obvious to the researcher that this was not necessarily always the case. This was confirmed by the interviewees who did in fact also mention that this is not the case and that there are overlaps in responsibilities and remit. The Economic Development Board (which is a member at the NPC) seems to be encroaching on NPC's remit. Although this has not been reported explicitly in the literary studies as an influential factor in public procurement policy it does however reaffirm the vital relationship between public procurement and good governance, as mentioned by Kashap (2004).

Good governance, explains Kashap (2004), is reflected in the adequate use of the government's limited resources in providing the best value for money services and goods for the public. Political obstacles as an influential factor, was found during the research; although mentioned in the literature, variations on how this occurs in Libya exist. Public organisations have political goals; the official may have been elected on these particular goals. Stakeholders in public procurement are many: citizens, taxpayers, the electorate, elected officials, management, and procurement officials, all of whom have different objectives and agenda (Knight et al., 2009). However, in Libya there is no electorate and officials are not elected but appointed by the head of state. Procurement can be influenced by political factors and it is this politicisation of process that creates conditions for corruption, particularly within developing nations (Sementelli, 2011).

6.3 Stakeholder Participation in Policy Development

The interviewees were asked in question three how users and other stakeholders opinions were taken into account in policy formation. Some examples include private enterprises, local governments, procurement managers, etc.

The majority of the interviewees made it clear that, due to the uniqueness of the governance system in Libya, all stakeholders are involved in procurement policy. Whilst this was true in theory, the majority of the interviewees seemed to agree in principle that Libya's governance structure of direct democracy approach to policy development, means all Libyan citizens are stakeholders. The literature does not mention nor address citizen participation in policy development in governance systems such as that of Libya but these findings in this particular case seem to be unique to Libya. Arguably, as Knight et al. (2009) mentions, that although public procurement buys goods or services for themselves they are also buying for the citizen that they are expected to serve. The suppliers in this case are also the citizens, taxpayers and electorate therefore, clearly stakeholders in public procurement are citizens, taxpayers, the electorate, elected officials, management, and procurement officials all of whom have different objectives and agenda. Murray (2007) highlights that the public sector works within a narrow framework of democratic governance strategy and management where local people exercise their right to determine how and by whom they should be governed through the ballot box, he continues further to explain that in turn, those who are elected not only have a representative advocacy role but are democratically accountable to their electorate for their decisions. However, the uniqueness of Libyan governance at the time means that citizens actually vote on each government policy such as procurement and not on a representative who will develop policy on their behalf.

6.4 Policy Monitoring

Question four asked the interviewees how the NPC captures, analyses and uses data captured by market research and Congress meetings to update or amend policy; and how, and on what basis, are policies then updated and amended. The purpose of this question was to establish a picture of what mechanisms are in place at the NPC as the state's policy initiator to monitor and update procurement policy to keep up with

changing laws, institutional arrangements, regional agreements and international agreements. Question three has raised various issues with regards to the NPC's monitoring of policy.

The lack of clarity in the remit of institutions as found with the Economic Development Board and NPC has in essence been identified in the literature. Knight et al. (2009) mentions that one of the differences between private and public sector procurement is the different demands and Knight et al. (2007) has grouped the various demands that differentiate public and private procurement thus:

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

Knight et al. (2007) mentions that the external demands are those of transparency, integrity, accountability and exemplary behaviour, because a government is expected to set an example not only in terms of ethical standards but in terms of efficiency and effectiveness of their own operations. Public procurement is often in the media for these particular reasons; fraud and corruption are dominant in some countries and those who have overcome these issues by introducing various reforms in their systems often have projects in the media for being late, over budget, or not delivering to a specified standard. This clearly sets out the importance of public sector procurement and its increasing importance on many political agenda globally (Knight et al., 2007). Thai (2009) mentions that public procurement has become much more complex than ever before, meaning public procurement practitioners have to deal with a broad range of issues, such as:

- Balancing the dynamic tension between:
 1. Competing socioeconomic objectives
 2. National economic interests
 3. Competition as required by regional and international trade agreements.
- Satisfying the requirements of fairness, equity, and transparency.
- Maintaining an overarching focus on maximising competition.

- Utilising new technology to enhance procurement efficiency, including e-procurement and purchase cards.

Public organisations have different goals, some of which may be conflicting such as good sewage systems and road works. Public organisations also have political goals; an official may have been elected on a platform of these particular goals (Knight et al., 2009). While this is true in the case of Libya, the conflicting demands are at a higher and more strategic level than the example mentioned by Knight et al. (2009). There was a clear and evident tug of war between the so-called reformists of the Seif Islam Gaddafi political camp, who advocated market liberalisation, and the old revolutionary guard, who were still set in their socialist views. One contributing factor identified in the research was the tendency to manage the material for decision-making on a ‘first come, first served’ basis. There is little scope for agenda planning or for giving preferential time to major issues. Issues are handled as they are raised, and there is no formal priorities agenda to assist in managing their review and the decision-making time. The lack of agenda management means using the scarce and valuable decision-making time inefficiently. More importantly, it inhibits effective collegiate or collective decision-making about the most important issues, thus contributing to ineffective decisions and unreliable policies. The findings illustrate that the approach in developing procurement policy is reactive. It was evident to the researcher from the interviewees that policies are adopted as single purpose responses to issues, generally in isolation of other considerations. Policies are not elaborated as part of an overall strategy to achieve change. In researching the case study organisation, i.e., the NPC, there did not seem to be priority areas where the government focused efforts on improvements in services and other aspects of public policy, and there was no strong sense of a clear macro framework that would link all aspects of the different policies together. A further finding was a lack of information and statistics, this was mentioned by the majority of interviewees as a problem when it comes to procurement policy development. However at the time of this research, the NPC did state that they were working on an integrated database along with the Ministry of Planning and Finance.

6.5 Policy Strengths and Weaknesses/WTO Accession

On 27th July 2001, the World Trade Organization (WTO), following the normal procedure for negotiating membership, agreed to set up a working party to examine Libya's application, which was made in December 2001. As an applicant country, Libya has been an observer to the WTO during the membership negotiations (General People's Committee for Trade and Economy Decision 2, 2001). It is unclear as yet where Libya stands with its application and there will not be any clarity until there is an elected government in Libya. During the time of the research there was a sense of mixed feelings about Libya's 'opening up' to the world of international trade and the liberalisation of Libya's economy, most notably from the reformists and the 'old guard'.

However the general rhetoric from the interviewees is that Libya should pursue WTO accession, and open up to international trade and liberalise its economy to allow for private sector development and job creation. However, various interviewees indicated that this was either too early, or not a pressing matter that ought to be sought at that time. Government procurement is of major economic significance, accounting for a considerable proportion of the national GDP, and having great impact on the efficiency of the use of public funds, as well as more generally on public confidence and good governance (WTO, 2012).

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

(Arrowsmith, 2011, p)

The vast importance of government procurement has been enhanced by the increased importance of public infrastructure investment and other procurement activities as an aspect of world economic activity in the context of the recent economic crisis (Arrowsmith, 2011). Although this was mentioned as a contributing factor to reforming Libyan procurement policy, clearly there is now a more pressing demand in

post-conflict Libya, where public infrastructure projects are set to rise considerably. The strongly differing views on Libya's accession to the WTO, was mostly around protecting Libyan interests. Trade agreements local or international, have been highlighted by Thai (2001) as being a challenge to public procurement; how to comply with government procurement regulations and social and economic procurement goals without violating any trade agreements? He mentions that, because markets have become more globalised through trade agreements such as the WTO's Government Agreement on Procurement, public procurement practitioners face challenges to both comply with these agreements and their own procurement laws and policies. This causes something of a dilemma where procurement practitioners are torn between trade agreements and their country's economic development/stabilisation policies (Thai, 2001). This may well be the case for post-conflict Libya and it is unclear as yet whether or not Libya will pursue (and at what pace) its application to the WTO. Nevertheless, some argue the other viewpoint to Thai (2001), and mention that the best instruments to support democratic transitions are enhanced trade agreements, which not only promote market access, but they maximise competitiveness that, in turn, enhances job-promoting reforms (Dadush & Dunne, 2011).

6.6 Policy Implementation

It was evident to the researcher that procurement as a function was not seen as a strategic part of the overall organisation of the NPC, nor that of the public sector departments who were interviewed. Matthews (2005) mentions that because government procurement has not been embraced by the academic community as a formidable player within public administration, there is a lack of educational alignment in the field; he continues that, although there has been progression in the area from the 'back room to the board room', it places purchasers in a position of;

'Pushing around enormous amounts of money, without specialised education'

(Callender as cited by Matthews, 2005, p390)

This is particularly evident in the findings, where procurement is handled and managed by ad hoc committees, usually comprising the legal and finance department of the organisations and government departments. This practice seems to be to the

norm whereby the NPC and other GP Congresses establish ad hoc committees of officials to carry out procurement.

The researcher identified that the focus on policy implementation seems to be on the preparation of formal policy instruments, which are the means of stating, in legal terms, the decisions, and defining the actions of government. It is one thing to turn assumptions into legal language, but not everyone will share the same assumptions about effective solutions to a problem.

Sementelli (2011) mentions that public procurement does indeed tend to rely on the professions of law, economics and operations management. Public procurement practitioners have long existed in a quasi-professional field, not a discipline as such and neither is it a profession, mentions Thai (2011). Carr-Saunders and Wilson (1927) as cited by Thai (2011) make a clear distinction between professionalism and professionalisation. Professionalisation is associated with the development of bodies that establish qualifications for entrance to an area of practice in a particular field, while professionalism has common attributes and characteristics which distinguish them from non-professional occupations (Thai, 2011). These attributes are listed below and outlined in Figure 6.2.

- Authority over clients: professionals have control over the nature of the service they render.
- Community sanctions: professionals are subject to licence or certification.
- Ethical codes: professionals have to adhere to ethical standards and codes.
- Grounded culture with a professional orientation: professionals enjoy job satisfaction from monetary rewards and symbols such as titles and awards.
- Presence of systematic theory, i.e., professionals, have extensive formal education.

(Thai, 2011)

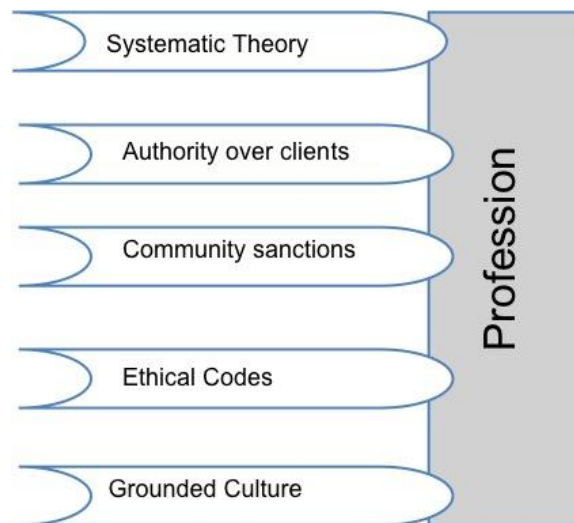


Figure 6.2: Basic Attributes of a Profession (Thai, 2011)

These common attributes of a profession do not exist in the Libyan context, and the findings clearly portray a lack of recognition of public procurement as a profession in its own right, and certainly not a strategic function within public organisations. Procurement may have more of a strategic character in the private sector than in the public sector argues Snider (2006), and it is the difference in tactical and strategic role of procurement that is attributable to the difference in public and private procurement; the lack of recognition of procurement as a strategic function within government departments seems to be a unique finding within the Libyan context. Matthews (2005) mentions that public procurement practitioners are told by their private sector peers to be more proactive to add value, however tradition has decreed that public

sector practitioners are required first and foremost to satisfy the complex accountability process of the government. Murray (2007) further states that, clearly at the procurement policy level there is a fundamental and accepted difference between private and public procurement due to public procurement sitting within legislative, administrative and judicial frameworks set by politicians.

6.7 Discussion Summary

In this chapter, the findings have been discussed in the light of the literature reviewed in Chapter 2. The next chapter will summarise the research content and will discuss if the aims and objectives of this research have been met. It will then review the contributions made by the research and offer recommendations for future research work.

7.0 Conclusion

7.1 Introduction

The research has examined the phenomenon of public procurement policy development at the National Planning Council (NPC) in the Libyan public sector, with the aim of identifying and investigating the key influencing factors that influence procurement policy development and decision-making processes in the Government of Libya. In this final chapter of the thesis, the conclusions are highlighted. The main aim and objectives and the research questions are revisited. The contribution to knowledge, recommendations for further related research and limitations of the study are also presented.

7.2 Meeting the Research Aim and Objectives

This section demonstrates the way in which the aim and objectives of the research have been achieved.

This research aims to ‘investigate the public procurement policy development during the People’s Authority governance system in Libya and identify the factors influencing public procurement policy development in the Libyan context’. This has been achieved by addressing the research objectives as follows.

The first objective was to review the relevant literature on public procurement, defining what public procurement is and the differences between public and private procurement. The literature review also explored how and where public procurement is used, or could be used, as a policy tool and looks into various models of best practice in different contexts. The researcher then went further to outline what has been identified by the various scholars as being factors that influence public procurement, some of which could be viewed as barriers and others not necessarily so. Whilst the vast majority of the literature either originates or is set in the context of developed countries, there was no literature that looked into the area specifically in the MENA region.

The second objective was to critically analyse current procurement policy in the Libyan context. After analysing the existing literature, the study proceeded to investigate the current public procurement policy of Libya; this was carried out both

in the literature review where the actual legal text was looked at and assessed using the World Bank Country Procurement Assessment Report as a framework, and in the findings from the primary data gathered through the semi-structured interviews carried out at the case study organisation. Data was also obtained from documentation, archival records, and direct observations, thereby allowing triangulation of data from various sources.

The third objective was to explore how and why procurement policy and strategies are developed in Libya and whether or not they are integrated with the wider government visions.

To meet this objective, the NPC was selected from Libyan governance structure as a case study as it was the key institute in the then government hierarchy that initiated and developed public procurement policy. Primary data was gathered from the case study organisation, as well as direct observation on behalf of the researcher in the field and, based on the data gathered, various findings were identified and analysed. Some of these have emerged as unique to the Libyan context and some have been identified as factors influencing public procurement within the various literary studies.

7.3 Answering the Research Question

The research question posed for this study was, ‘What are the influencing factors that directly or indirectly affect procurement policy development in the Libyan context? How do these factors affect public procurement policy development and why do they exist?’

Various factors were identified during the study, these include:

- There are different perspectives on public procurement policy development, but most of those who claimed to have knowledge about its development were affirmative in their response that policy is a people’s decision through Congress.
- Public procurement policy is outdated and old.
- Public procurement policy requires reform.
- Public procurement policy is often open to misinterpretation.
- Corruption is widespread due to the outdated procurement policy and low public salary scales.

- There are ambiguities in institutional roles and remit.
- There is a lack of coordination (silo institutions cause overlap).
- There is a lack of unified government policies.
- Reform is required in policy harmonisation.
- There is no long term strategy for public procurement policy.
- Political obstacles exist.
- Administrative obstacles exist, i.e., incompetence.
- Citizens may not know what is at stake if they are allowed to vote on highly technical areas such as public procurement policy.
- Private sector participation is now embraced by the state in public procurement policy development.
- There is a poor mechanism for policy development at the BP Congress level.
- It is a major step to transition from a socialist to a capitalist economy.
- WTO accession is seen as too early in this transition.
- Procurement policy is not fit for purpose, it is old and outdated.
- There are transparency issues in the procurement regime.
- There is no procurement function at most government institutes.
- Ad hoc committees are set up to carry out the purchasing function.
- Procurement is perceived as an administrative function and carried out by financial and legal departments.
- Procurement methods are traditional.
- Nepotism is a problem in procurement implementation.
- Procurement implementation is disorganised.

Whilst many of these factors have been identified by other studies within the field some of which however are very much unique to the case of Libya.

The research question also queries, 'Why do these factors exist?' The overall results of this research have illustrated the reasons which ultimately stem from Libya's unique governance structure and administration at the time of the research. However, some of the negative factors seem to have manifested itself in a deeply-rooted culture within the public sector which will take Libya a long time to rid itself of in its transition.

7.4 Originality and Contribution to Knowledge

To the best of the researcher's knowledge, this study is the first relating to the factors influencing affecting public procurement policy development in Libya. The researcher feels that this study will contribute to the existing body of knowledge on state public procurement policy and its development, whilst emphasising inputs and transformational processes operating on the construction of public policy in Libya. Thiagaragan et al. (2001) mentions that the provision of theory and knowledge specifically outside developed economies is a valid contribution of any research. As very little empirical literature exists in the context of Libya, this research makes a contribution to the literature on public procurement in the context of a developing country. With the recent shadow of recession on the world economy in general, there has been a growing awareness of the importance of sound public procurement policy around the globe; this research extends previous studies which were conducted mostly in western countries, and provides insight and understanding to academics and practitioners in developing economies where there is a shortage of knowledge in the area of public procurement. Contribution to knowledge has also been achieved by identifying influencing factors within the Libyan context and reporting back in to the current scholarly literature. This research also aimed to identify findings that may well be used for legislative advocacy in the current Libyan public policy discourse. Referring back to Figure 1.1 from Chapter 1, the research question and the intended contribution of knowledge of this research is highlighted.

Table 7.1 illustrates some of the findings found that were mentioned by the various literary sources and highlights thoughts unique to the case of Libya.

Influencing Factors	Literature	Libya
Governance Structure	(Murray, 2007) (Knight et al., 2007) (Thai, 2001) (Kashap, 2004)	✓
Reactive Decision making	X	✓
Policy Development process produces unreliable decisions	X	✓
Outdated Laws and Regulations	(Thai, 2001) (CPAR, 2006)	✓
Misinterpretation of Policy	(Thai,2008) and (Garcia, 2009)	✓
Ambiguities in institutional roles and remits	X	✓
Political Factors	(Thai, 2009) (Sementelli, 2011)	✓
Conflicting Demands	(Knight et al., 2009)	✓
Lack of reliable data	X	✓
WTO accession / Trade agreements	(Thai, 2001) (Dadush & Dunne, 2011)	✓
None strategic function	(Matthews, 2005)	✓
There is no procurement function at most government institutes	X	✓
Ad hoc committees are set up to carry out the purchasing function	X	✓

Table 7.1: Highlighted factors from literature and Libya

7.5 Limitations of the Study

Yin (2003) notes that every research study is limited by the constraints placed upon the researcher, and this research is no exception. The researcher has made every effort to overcome these limitations to ensure that this study could be conducted smoothly, but it was not possible to control all the factors that were likely to affect its quality. The limitations of this research are:

- First and foremost, the events of 2011 in Libya disrupted the research somewhat but also possibly made this research more valid within the public discourse in the region.
- Due to the political sensitivities in the context of this research, only formal institutions, i.e., the NPC, were studied and not the two other policy initiators in Libya at the time.
- Some documents within the NPC were restricted and the researcher was only able to review them at the NPC and not to obtain copies.
- Translation issues of the interview transcripts were also an issue especially when running the transcripts through NVivo.
- Some cultural and political barriers were evident during the interviews when a few participants seemed uncomfortable in giving certain information.

7.6 Recommendations for Further Research

In the current complicated and volatile environment, Libya faces a series of key challenges. In Libya's history it was the prominence of trade that served to unite the various tribes and nomadic ethnicities that occupied this vast land. As a country possessing one of the lowest population densities in the world, it is trade that has united Libya's population. In reflecting on this history, there are reasons to believe that divisions can be overcome and the Libyan population will figure out mechanisms to resolve its disputes; this pragmatism will be motivated by the need to maximise these trade relations in the face of austerity.

In Paris on 1st September 2011, the Libyan Transitional Government led a donor coordination conference and established the terms of reference of the Post Conflict Needs Assessment (PCNA) by which the donor community, both multilateral and bilateral, abides. The significance of this conference was the establishment of the

concept that the new transitional leadership in Libya sought a common strategic framework for the technical assistance due to be received from multilateral and bilateral bodies.

The first initiatives of the PCNA process was to conduct a Public Financial Management assessment led by the World Bank and the International Monetary Fund, the execution of which was based on a mandate from the UN Security Council. This would include public procurement as a key area requiring development. However, at the outset of the current public agenda in Libya, public procurement does not seem very high on the government's agenda, and much emphasis has been made on the unfreezing of assets. Some would argue that mechanisms ought to be put in place to ensure stronger governance and more transparency over the management of these assets and public procurement in general, before they should be accessible to the new Libyan authorities.

This study has prompted many interesting areas that could be explored in further research; with the current changing and fluid democratisation process in Libya, this research represents a beginning rather than an end to an opportunity of exploring further research in public procurement policy development in Libya. The researcher feels that areas that should be developed further as areas of research in the near future are:

- This research could be replicated in different developing countries as part of a wider comparative study.
- As this study was carried out during the Gaddafi era of Libya, a similar study should be carried out in the new public sector context of Libya, i.e., 2011 to date.
- The researcher recommends that a further study should look into how public procurement could settle the current volatility within the Arab Spring countries of Tunisia, Libya and Egypt.
- The researcher recommends a further study on how public procurement could affect and enhance national reconciliation and political settlements within Libya amongst the various tribes and regions with the view to explore the political economy of public procurement in Libya and the region.

- Specific research should also investigate and understand more about the impact of informal institutions that influence public procurement in Libya and neighbouring MENA countries.

7.7 Final Word

As a final comment on the study conducted, the researcher feels that the whole experience has been revealing and has demonstrated that, above all, the strong potential that exists within the Libyan public sphere which has been completely suppressed in past years by the intervention of both the political and social systems. It is hoped, therefore, that the lessons learned from the investigation are taken as important, and that it is recognised that a certain amount of change to cultural attitudes is required. Against this backdrop, although Libya has in the past decade and more so now, has embraced and realised the necessity of change and has attracted international assistance in doing so, the researcher feels strongly that change ought to be driven from within the Libyan context and not imposed. Whilst the international community have and are assisting Libya on a variety of key policy areas in support of its transition, a more coordinated approach should be adopted with public procurement and general Public Financial Management (PFM) reforms being at the heart of this change and support.

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NUMBER OF PARTICIPANTS IN THE STUDY 20

Thematic Categories/Constituents	%	%	M1	M2	M3	M4	N1	N2	N3	N4	N5	N6	N7	N8	N9	N10	N11	N12	B1	B2	B3	B4
Thematic Category 1: System of policy development in Libya																						
Citizens possess supreme power to raise issues and thereby propose solutions	19	95%	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1	1	1
Government agencies have the mandate to respond to national and sectoral issues through policies	19	95%	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1	1	1
Policies are acted through government planning and consultation with the people	19	95%	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1	1	1
Congressional members represent the voice of the people	19	95%	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1	1	1
Constitutional policies are results of people's decisions represented by their representatives	19	95%	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1	1	1
Sub Thematic Category 1: Challenges in policy development																						
Majority of current policies are outdated	13	65%	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Amendments of policies require national budget appropriation	10	50%	1	1	1	1		1	1	1	1	1		1		1		1	1	1	1	1
Prioritization of policies to be amended	9	45%	1	1	1	1		1	1	1		1		1		1		1	1	1	1	1
Success of amending policies require active participation and advocacy	5	25%	1			1			1			1			1		1		1	1	1	1
Thematic Category 2: Policy harmonization strategies																						
Necessity of policy amendment particularly the outdated laws	16	80%	1			1		1	1		1	1	1	1	1	1	1	1	1	1	1	1
Involvement of the academe and other specialist	12	60%					1		1	1	1	1	1		1	1		1	1	1		1
Mutual understanding regarding working together	11	55%	1				1		1			1	1	1	1		1		1		1	1
Consultation with people	10	50%	1		1			1		1			1		1			1	1		1	1
Alignment of policies with human resource capabilities	6	30%				1			1		1		1	1		1						
Harmonization strategies are yet to be explored	2	10%	1			1																
Thematic Category 4: Stakeholders' participation in policy formulation																						
BPCS represents the people's voice	18	90%	1		1	1	1	1	1	1	1	1	1	1	1	1	1		1	1	1	1
Involvement of consultants and/or specialist	17	85%	1	1	1	1	1			1	1		1	1	1	1	1	1	1	1	1	1
Active role of the academe in policy studies	16	80%	1	1		1	1	1		1			1	1	1	1	1	1	1	1	1	1
Sectoral representations in policy formulation	12	60%	1	1			1		1			1			1		1	1	1	1	1	1
Regular conduct of meetings to convene for prioritization of policies	12	60%	1		1		1		1		1	1	1	1			1			1	1	1

Establishment of a structure that accepts policy proposals	11	55%			1		1	1	1			1		1	1		1		1	1
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Thematic Category 5: Policy development, monitoring, and evaluation

Conduct of regular meeting with sectoral representatives	13	65%	1		1		1	1		1	1		1		1	1		1	1	1
Conduct of policy evaluation studies	13	65%	1	1	1		1	1	1	1	1		1	1	1		1		1	1
Each legislative committee has a research policy department	12	60%	1	1	1		1		1	1		1		1	1		1	1		
Involvement of private companies and other stakeholders in policy implementation, monitoring, and evaluation	12	60%	1		1	1	1		1	1	1		1		1		1		1	1
NPC accepts policy proposal, review, and submit to congress	11	55%	1	1			1		1	1	1	1		1			1		1	1
Policy issues and proposals are submitted to NPC for review	8	40%	1		1		1	1	1					1			1			

Thematic Category 6: Influencing factors of policy development

Possible benefits of globalization and trade liberalization	12	60%	1	1	1	1		1		1	1	1		1		1		1		
Governments are unprepared of the changes	11	55%	1	1		1			1	1	1	1		1	1	1		1		
Perceived needs of aligning national policy to that of the international government policy	11	55%	1		1		1	1		1		1		1	1	1		1	1	
Knowledge and skills of policy negotiators	9	45%	1	1		1			1			1		1			1	1		
Active advocacy of sectoral groups for policy amendments	9	45%	1			1	1	1	1	1			1		1	1				
Changes in the social and political environment	4	20%				1			1		1									

Thematic Category 7: Status of procurement policy implementation

Absence of procurement department in public offices	15	75%	1	1	1	1		1	1	1	1	1	1	1	1		1	1		
Procurement is handled by respective offices particularly finance department particularly small transactions	12	60%	1	1	1	1		1		1	1	1		1		1	1		1	
Use of procurement committees to handle large procurement transaction	11	55%	1	1		1			1	1	1	1		1	1	1		1		
Limited number of competent staff to handle procurement	11	55%	1		1		1	1		1			1		1	1	1	1	1	
Hiring of consultants to facilitate procurement process	9	45%	1			1		1	1	1	1			1		1	1			

Annex 2

NTC

A vision of a democratic Libya

The interim national council hereby presents its vision for rebuilding the democratic state of Libya. This vision responds to the needs and aspirations of our people, while incorporating the historical changes brought about by the 17 February revolution.

We have learnt from the struggles of our past during the dark days of dictatorship that there is no alternative to building a free and democratic society and ensuring the supremacy of international humanitarian law and human rights declarations. This can only be achieved through dialogue, tolerance, co-operation, national cohesiveness and the active participation of all citizens. As we are familiar with being ruled by the authoritarian dictatorship of one man, the political authority that we seek must represent the free will of the people, without exclusion or suppression of any voice.

The lessons of our past will outline our social contract through the need to respect the interests of all groups and classes that comprise the fabric of our society and not compromise the interests of one at the expense of the other. It is this social contract that must lead us to a civil society that recognises intellectual and political pluralism and allows for the peaceful transfer of power through legal institutions and ballot boxes; in accordance with a national constitution crafted by the people and endorsed in a referendum.

To that end, we will outline our aspirations for a modern, free and united state, following the defeat of the illegal Gaddafi regime. The interim national council will be guided by the following in our continuing march to freedom, through espousing the principles of political democracy. We recognize without reservation our obligation to:

1. Draft a national constitution that clearly defines its nature, essence and purpose and establishes legal, political, civil, legislative, executive and judicial institutions. The constitution will also clarify the rights and obligations of citizens in a transparent manner, thus separating and balancing the three branches of legislative, executive and judicial powers.

2. Form political organisations and civil institutions including the formation of political parties, popular organisations, unions, societies and other civil and peaceful associations.
3. Maintain a constitutional civil and free state by upholding intellectual and political pluralism and the peaceful transfer of power, opening the way for genuine political participation, without discrimination.
4. Guarantee every Libyan citizen, of statutory age, the right to vote in free and fair parliamentary and presidential elections, as well as the right to run for office.
5. Guarantee and respect the freedom of expression through media, peaceful protests, demonstrations and sit-ins and other means of communication, in accordance with the constitution and its laws in a way that protects public security and social peace.
6. A state that draws strength from our strong religious beliefs in peace, truth, justice and equality.
7. Political democracy and the values of social justice, which include:
 - a. The nation's economy to be used for the benefit of the Libyan people by creating effective economic institutions in order to eradicate poverty and unemployment – working towards a healthy society, a green environment and a prosperous economy.
 - b. The development of genuine economic partnerships between a strong and productive public sector, a free private sector and a supportive and effective civil society, which overstands corruption and waste.
 - c. Support the use of science and technology for the betterment of society, through investments in education, research and development, thus enabling the encouragement of an innovative culture and enhancing the spirit of creativity. Focus on emphasising individual rights in a way that guarantees social freedoms that were denied to the Libyan people during the rule of dictatorship. In addition to building efficient public and private institutions and funds for social care, integration and solidarity, the state will guarantee the rights and empowerment of women in all legal, political, economic and cultural spheres.
 - d. A constitutional civil state which respects the sanctity of religious doctrine and

condemns intolerance, extremism and violence that are manufactured by certain political, social or economic interests. The state to which we aspire will denounce violence, terrorism, intolerance and cultural isolation; while respecting human rights, rules and principles of citizenship and the rights of minorities and those most vulnerable. Every individual will enjoy the full rights of citizenship, regardless of colour, gender, ethnicity or social status.

8. Build a democratic Libya whose international and regional relationships will be based upon:
 - a. The embodiment of democratic values and institutions which respects its neighbours, builds partnerships and recognises the independence and sovereignty of other nations. The state will also seek to enhance regional integration and international co-operation through its participation with members of the international community in achieving international peace and security.
 - b. A state which will uphold the values of international justice, citizenship, the respect of international humanitarian law and human rights declarations, as well as condemning authoritarian and despotic regimes. The interests and rights of foreign nationals and companies will be protected. Immigration, residency and citizenship will be managed by government institutions, respecting the principles and rights of political asylum and public liberties.
 - c. A state which will join the international community in rejecting and denouncing racism, discrimination and terrorism while strongly supporting peace, democracy and freedom. (NTC 2011)

Annex 3

Libyan Procurement Code of Practice Temporary Financial Mechanism

(Procurement of period of May 2011-Dec 2011)

Temporary Financing Mechanism

PROCUREMENT CODE OF PRACTICE

1. Introduction

Procurement covers the acquisition of goods, services and works. Procurement ranges from the negotiation of corporate contracts for the supply of routine goods and services through to the more complex partnership arrangements such as Public / Private Partnership (PPP) or joint commissioning with another public sector organisation. It includes all stages in the process, from identifying need, considering options, obtaining the required solution, contract monitoring, through to final disposal or cessation.

Effective procurement is central to delivering high quality, value for money services. The TFM must ensure that it obtains the necessary goods, services and works to the required level at the most economically advantageous price.

2. Good Practice in Procurement

Procurement Activities

Procurement activities can be divided into three general types:

- a) Goods: Purchases to enable services to carry out their day to day functions (for example, purchase of stationery, photocopiers, travel services, etc.)
- b) Services: The procuring of services either for the Public Body or for delivery of services on behalf of the Public Body (for example security, consultancy, social care).
- c) Works: Development, construction, building and maintenance works which include large scale contracts.

Note: some projects will involve a mix of the above.

A Procurement Model

The following model summarises the various stages of a procurement process. The detail and application of the model will vary depending upon the actual procurement activity, but it is good practice to consider all the following stages when planning a procurement activity.

All procurement decisions must be considered on their own merit, options considered and the most appropriate procurement route used. The key test will be what is most likely to deliver value for money for the TFM and citizens.

Stage 1 – Identifying the Need

If it is necessary to undertake a procurement process, it should be planned taking account of the following stages in a good practice procurement process.

Stage 2 – Preparation and Planning

- All major projects should be adequately planned and consideration given to the resources required to achieve completion within the desired timescale.
- Develop a business case including an analysis of the market, linkages with other projects / systems, financial implications; and an option appraisal as a minimum.
- Specify what it is you want and why the need has arisen. In any exercise where you are seeking tenders or quotes, produce a written specification. The scope and detail of the specification will depend on the procurement exercise, but where appropriate describe the outputs or outcomes that are required.
- If what you require is already covered by an existing contract or arrangement,
 - then the existing arrangement could be used
- Ensure that finance is available. If the contract is for more than one year, is funding secured for subsequent years?
- Identify who will lead the process, who is responsible for making decisions and who will be appointed as contract manager. The contract manager should be involved from the outset of any procurement process. Establish effective lines of communication and

appropriate consultation at the outset, and maintain these throughout the process between all relevant parties.

- Identify the most appropriate procurement “route” – which process is most appropriate and likely to deliver the best value outcomes?
- Produce a project plan, identifying the required activities and deadlines (a good timetable is a key requirement for a successful process). Do not underestimate the time needed to undertake the procurement process.
- Establish in writing the evaluation criteria – how will the responses be evaluated? In a tender exercise, you must clearly explain the evaluation criteria and process in the tender documents. Your evaluation criteria should be weighted to reflect the relative importance of the criteria. The published advertisement / contract notice inviting bids should show these criteria in descending order of importance, and the relative weights should be shown in the tender documentation. The evaluation criteria must be comprehensive and officers must ensure that the subsequent contract award is based on the published criteria.
- Persons to be involved in the evaluation process should be identified and clearly made aware of their roles and responsibilities.
- What control should there be for inflation or annual price increases? It is usual to apply a relevant index.
- Consideration should be given to the pricing mechanism; is the contract fixed price or variable. What method is to be applied for variable priced contracts?
- Ensure that pricing schedules capture whole life costs including acquisition, licensing and disposal costs where appropriate.
- Will there be options to extend the contract?
- Consideration must be given from the outset and throughout the procurement process for all contracts where the TFM or other Public Body may own an asset once the contract has been carried out.

Stage 3 – Going to the Market (Quote / Tender)

This can range from going direct to an approved supplier for small value goods through to a full tender exercise.

Stage 4 –Evaluation

Quotes and tenders must be evaluated against the pre-determined criteria, and the process documented in the invitation to quote/tender. All judgements and notes must be objective and capable of being evidenced.

Stage 5 – Contract Award

In a tender exercise the contract will be provided by the TFM or other Public Body, and unless an established internal model contract or an international standard document is used, it should be checked by legal advisers for legal conformity.

When negotiating a contract, ensure that personnel (including a legal adviser if required) are appropriately experienced and/or qualified to negotiate on behalf of the Public Body, and no conflict of interest is present, or is likely to be present.

Careful consideration should be given to the contract period. The contract period should be set based on the nature of the market (for example, the competitiveness and stability of the market), the costs of tendering, risk and the overall value. It is often beneficial to have provision for contract extensions.

For contracts not subject to the above, be prepared for requests for debriefing unsuccessful tenderers.

Any contract award process must be fully documented, transparent, undertaken to the highest standards of probity, and open to scrutiny (see conflicts of interest below).

Stage 6 – Contract management

The key to maintaining a successful contract and contractual relationship is in contract management. The level and type of contract management will vary depending on the nature of the contract, but can range from regular meetings with the supplier through to more formal contract monitoring against targets and performance indicators.

Contract monitoring procedures should provide sufficient review of performance and the feedback should be used to inform other subsequent procurement exercises. Such reviews will highlight the lessons to be learned and assist in continuous improvement in future contracts. It is therefore essential that appropriate reporting is established and utilised for this purpose.

Within any procurement process, performance and quality needs to be addressed in respect of the goods, services or works being procured. For example, all relevant performance indicators, targets, monitoring and reporting procedures should be incorporated into the specification and evaluation processes.

It is important to plan ahead to develop a process for dealing with the expiry or re-tendering of the contract.

Common Principles

The following are key principles and approaches that are common to all types of procurement.

a) Transparency and probity

All procurement processes must be carried out with integrity, to the highest ethical standards, and be well-documented to provide an “audit trail”. The documentation should include a record of decisions, who made them and the rationale for the decisions. The process and documentation must be robust and be able to withstand scrutiny. Always produce documents on the assumption that they can be viewed by companies and the public this will assist in the securing of “probity”.

Any procurement process should have a designated person responsible for delivering the process.

The procurement process undertaken must be based on a clear evaluation of the options, and the agreed process followed throughout unless there are genuine grounds for revising the process, and in which case interested parties should be informed of any changes and the reasons why. In some instances the change in the process may necessitate the process being abandoned and re-started. All changes / re-starts should be documented to demonstrate that probity is being maintained.

b) Consultation

Consultation with interested parties should be an intrinsic part of major processes to ensure that the required services or goods are specified and procured.

Consultation should be undertaken at all levels including service recipients and potential providers.

4. TFM policies and procedures

Competition in the acquisition of goods and services

It is presumed that a competitive procurement should be used, unless goods or services to be procured are of low value. The relevant thresholds and the key sections, shall be as follows:

Value (Dinars)	Procedure	Process requirements
Up to 2999	Direct purchase	Direct order placement (unless annual usage is expected to exceed 7999 Dinars see 8000 below if this is the case).
3000 to 7999	Quotation	Seek 3 written quotations. (unless annual usage is expected to exceed 7999 Dinars see 8000 below if this is the case).
7000	Tender	Prepare and issue formal tenders.

Note:

In the context of the table above, a “quotation” is usually a simple document with standard terms and conditions attached, which is produced so that basic pricing information can be obtained from suppliers for non- complex low value items. Price will often be the only criteria with a quote. A “tender” is a more formal document which includes a detailed specification of the product, service or works that are required and usually includes Standard Terms and Conditions. Price and quality are the criteria with a tender. In such cases, consideration should be given to the costs that are expected to be incurred throughout the life of the project.

In cases of urgency, great need or special circumstances the above thresholds may be set aside. However each case must have a clear written rationale, including benchmarking information to demonstrate that a reasonable price is being paid.

This rationale must be approved by the FMA and the Steering Board.

Conflicts of interest

Personnel involved in procurement processes should not have conflicts of interest. (See appendix A).

Maintaining Records and Access to Information

Records need to be retained of all stages in a procurement process. The assumption should be made that such records may become public and therefore they need to be comprehensive, accurate, and non-defamatory.

The TFM should publish the award of contracts on the TFM website.

ANNEX A

CONFLICT OF INTERESTS - GUIDANCE AND DECLARATION

Guidance

It is your responsibility to make sure that you comply with these requirements. You should regularly review your personal circumstances with this in mind. If you are unclear about any question of propriety, you must seek advice from a senior officer complete and where necessary sign and complete a Conflicts of Interests Declaration form Conflicts of Interest Declaration should be used for this purpose. The form is reproduced below.

It is a condition of being part of a Tender process that before you may take part in a Tender Evaluation or in of the proceedings of the Tender in any respect leading to the award of a contract or the intended award of a contract, you must sign the a Conflicts of Interests Declaration to certify that you have no personal, financial or other conflict of interests with respect to the award recommendation or the tender decision. Such conflicts would include, but would not be limited to, you or your immediate family members, being related to, or in any way acquainted with, any firm, company or organisation that is to be considered by the Tender Team for award of contract.

CONFLICTS OF INTERESTS DECLARATION

I hereby declare that I have no personal, financial or close family interests which might impinge or might reasonably be deemed by others to impinge on my impartiality with regard to any aspect of my involvement in Tender Number *[insert number]* and/or Contract Number *[insert number]*.

This involvement includes, but is not limited to, the evaluation of the above-numbered Tender and/or the proceedings of the Tender Team of *[insert date]* to decide on the award of contract in respect of the above-numbered Tender.

Signed:

Name:

Date: