

TECHNICAL PUBLICATION

# LEGAL FRAMEWORKS FOR GENDER-RESPONSIVE PROCUREMENT

A comparative review of regulatory and policy measures  
and international and national legal norms





LEGAL FRAMEWORKS  
FOR GENDER-RESPONSIVE  
PROCUREMENT  
A COMPARATIVE REVIEW  
OF REGULATORY AND POLICY  
MEASURES AND INTERNATIONAL  
AND NATIONAL LEGAL NORMS



**ECONOMIC EMPOWERMENT SECTION**

**UN WOMEN**

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# I. PREFACE

For more than a decade, UN Women has championed gender-responsive procurement (GRP) as a lever for women's economic empowerment.

Gender-responsive procurement applies a gender perspective to procurement, which is broadly speaking a process at the intersection of a complex web of policies, legal frameworks and business relationships and market forces that span the globe. Government procurement alone represents an annual market of more than US\$12 trillion globally, so its potential power is substantial. Procurement in the private sector would make it even more significant. As procurement connects all types of businesses, governments and organizations, the norms and institutions that govern these transactions can shape relationships among buyers and suppliers, consumers and workers.

Yet gender discrimination and inequality are present in virtually all procurement systems, whether public or private. Women and their businesses neither win an equal share of procurement contracts nor make up an equal number of professional buyers and supply chain managers. Indeed, women continue to face entrenched discrimination and structural inequality at every stage of business development and growth, hampering their ability to compete at cost and scale with larger businesses, typically owned and led by men. Furthermore, procurement processes are often seen, erroneously, to be gender blind. The gender impact of what is being procured, whom it is being procured from and how it is being procured are not typical questions which procurement organizations ask consistently and systematically.

The purpose of this report is to increase understanding of the legal, policy and regulatory frameworks in which procurement is embedded, with a view to supporting the development and implementation of more gender-responsive policies and practices. The intended audience are stakeholders involved in supply chain management and procurement as buyers, suppliers and policymakers, as well as workers, consumers and

community members. This report is intended to provide an evidence base to reform procurement systems to be more gender responsive.

The idea of leveraging procurement for social outcomes, including women's economic empowerment is not new. Until recently, the prevailing strategy was to support individual suppliers who are women. UN Women attempts to take a systems view on gender and procurement. This means our focus is on how the procurement system contributes to enabling gender equality and women's empowerment in society. What is new is the notion that gender-responsive procurement is not just about supporting individual suppliers, but also workers and consumers—and advocating for more gender-responsive businesses and business practices in general.

UN Women offices in more than 40 countries have embarked on a journey to bring the principles of gender-responsive procurement to the public and private sector as a component of efforts to advance women's economic empowerment. Based on UN Women's significant knowledge base and practical experience, we have learned that the key ingredients in creating sustainable impact include enabling legal and policy frameworks, evidence to support informed policymaking and implementation, partnerships and increasing the capacity of both buyers and suppliers. The present report focuses on the first of these elements: enabling legal and policy frameworks.

As procurement is at the intersection of many laws and policies, a critical question is whether legal frameworks can support reforming the procurement system to be more gender responsive. For this study, the procurement frameworks in 30 countries were analysed to assess the extent to which a gender-responsive procurement approach in its broadest terms could be enabled by existing laws and policies. The question of whether international law could be conducive to gender-responsive procurement practices was also explored.

The data revealed a complex web of frameworks and institutions governing procurement. The survey found that only a minority of governments have introduced targeted measures to promote gender-responsive procurement. However, a handful of governments around the globe are finding innovative ways to enable and incentivize GRP in both the public and private sectors. Such governments are promoting GRP at two levels: firstly, by using their role as a regulator and carefully structuring the rules that govern the public and private procurement processes and, secondly, by using purchasing and sourcing policies and practices as powerful tools to economically empower women.

There are eight main types of legal entry points for practising gender-responsive procurement, and some countries already have some explicit reference to gender equality in relevant laws. Furthermore, the legal analysis concluded that international law provides the supporting conditions for reform. This study is the first step in assessing the legal feasibility of developing GRP systems around the world.

The report identifies a wide range of policies and measures developed and deployed around the globe that seek to align public and private procurement practices with advancing gender equality and women's economic empowerment. While some measures specifically target GRP, others seek to promote "gender-responsive business practices" more broadly. These are corporate business practices that seek to promote gender equality and women's advancement in the workplace.

One very important consideration with respect to GRP is whether such policies or relevant public or private sector measures may violate the fundamental principles of equality and non-discrimination. This could be a legitimate and important legal consideration where policy and measures seek to provide preferential treatment to women compared to men.

The fundamental principles of equal treatment and non-discrimination are explicitly referenced in many international human rights instruments and within national constitutions and legislative provisions. While any form of preferential treatment inherently goes against these fundamental principles, the report details international and national legal norms that explicitly permit preferential treatment under strictly defined conditions related to proportionality, transparency and due diligence.

In particular, Article 4 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) permits States Parties to adopt temporary special measures aimed at accelerating de facto equality between men and women. Such measures are not considered to be discriminatory under the Convention but must be discontinued when the objectives of equality of opportunity and treatment have been achieved.

The report documents that similarly within national law, several states have introduced legislation to clarify the permissibility of preferential treatment regimes. A few states have taken a further step to provide a clear basis for GRP within national procurement regulations.

However, in the majority of surveyed states, it is still an open question whether certain GRP measures might violate constitutional principles and relevant legislation related to equality and non-discrimination. This finding points to the need for national law reform as the basis for a more favourable legal and policy framework to be created for GRP and for public and private buyers seeking to implement GRP in their policies and practices.

While no procurement system is yet completely gender responsive, this report presents clear evidence of scope for improvement in legal and policy frameworks. However, changing laws and reforming policies will not be enough given the complexity of the networks, relationships and actors involved in procurement. For this reason, it is hoped that the study findings will inspire and encourage procurement actors and stakeholders to make procurement systems work for women.

## II. DEFINITIONS

Within this study, the following words and expressions shall have the following meanings, save to the extent expressly provided within the study.

Where terms are defined within Parts 3, 4 and 5 of the study, the defined term shall only apply to that section and the Participating Country that is listed next to the definition.

<b>Bidder</b>	Any company (public or private), state-owned entity or individual bidding in a competitive tender process for a contract to provide services, supplies or works to a public or private buyer.
<b>Contracting authority (or “public buyer”)</b>	An entity that awards a public procurement contract for services, supplies or works (e.g. government, entities governed by public law).
<b>ESG</b>	Environmental, Social and (Corporate) Governance
<b>Gender equality</b>	The equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women’s and men’s rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men.
<b>Gender mainstreaming</b>	A strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality.
<b>Gender-responsive business practices</b>	Corporate business practices that seek to promote gender equality and women’s advancement. For example, policy and programmes that promote equal pay, equal representation in the workforce, equal access to promotions, equal access to business opportunities, increasing the number of women in leadership positions, flexible working arrangements, strong child care, paternity and maternity policies and strong sexual harassment and gender-based violence policies.
<b>Gender-responsive procurement (GRP)</b>	The selection of services, goods and civil works that considers their impact on gender equality and women’s empowerment. This includes sourcing from women-owned and women-led businesses, as well as gender-responsive enterprises.
<b>NGO</b>	Non-governmental organization (also known as a non-profit or not-for-profit organization)
<b>Private buyer</b>	A company, whether privately or publicly owned (regulated by private law), engaged in the act of acquiring goods (supplies), services or works.
<b>Procurement</b>	The act of acquiring goods (supplies), services or works by companies (regulated by private law) or by contracting authorities (regulated by public law).
<b>Public buyer</b>	A public entity (regulated by public law) engaged in the act of acquiring goods (supplies), services or works.
<b>SDG(s)</b>	Sustainable Development Goal(s) of the UN
<b>SME</b>	Small and medium-sized enterprise



<b>Supplier</b>	Any private company or individual contracted to provide services, supplies or works to a public or private buyer.
<b>UN</b>	United Nations
<b>WEPs</b>	UN Women’s Empowerment Principles
<b>Woman entrepreneur / women entrepreneurs</b>	A woman or a group of women who initiate, organize and operate a business enterprise.
<b>Women’s empowerment</b>	Women’s empowerment has five components: women’s sense of self-worth; their right to have and to determine their own choices; their right to have access to opportunities and resources; their right to have power to control their own lives, both within and outside the home; and their ability to influence the direction of social change to create a more just social and economic order, nationally and internationally.
<b>Women-owned business</b>	A business enterprise established as a private legal entity that is more than 51-per-cent owned, managed and controlled by one or more women.

# III. INTRODUCTION

This report compares several regulatory and policy measures seeking to promote gender-responsive procurement (**GRP**) in various jurisdictions around the globe. The report also sets out the international human rights law framework relevant to GRP and explores a number of national legal frameworks.

UN Women defines GRP as “*the selection of services, goods and civil works that considers their impact on gender equality and women’s empowerment.*”<sup>1</sup> This includes sourcing from women-owned and women-led businesses, as well as gender-responsive enterprises.<sup>2</sup> GRP is founded on international standards, agreements and principles that are relevant to improving gender-responsive working conditions and are essential for upholding women’s basic rights in the supply chain.<sup>3</sup>

According to UN Women, the basic recognition and understanding that women and men business owners face different situations is a crucial element in the process of developing an effective gender-responsive procurement programme.<sup>4</sup> Numerous financial and non-financial barriers continue to impede women entrepreneurs from entering and fully participating in the formal economy and corporate supply chains. A lack of financing, a lack of access to social and human capital, and sociocultural challenges have all proven to be major factors in restricting the size and growth of women-owned businesses. As a result, women entrepreneurs from different backgrounds—in terms of factors including class, race/ethnicity, sexual orientation and gender identity, age and education—access less capital and fewer resources than their counterparts who are men, preventing them from fully participating in local and global value chains.

The sheer size and volume of the global procurement market indicates that both corporate as well as governmental procurement entities are well positioned to promote gender equality and women’s empowerment (hereinafter referred to respectively as “**private buyers**”

and “**public buyers**”).<sup>5</sup> Public procurement in particular can be used to achieve socioeconomic objectives, due to the fact that it operates at the intersection of the government’s buying and regulatory powers. On the one hand, governments are in charge of regulating the procurement process by establishing the regulatory and legal framework. On the other hand, the government simultaneously functions as a market participant by spending vast sums to purchase the goods, services and works required to fulfil public functions. As such, governments can promote GRP at two levels: first, by using their role as a regulator and carefully structuring the rules that govern the procurement process and, secondly, by using purchasing and sourcing policies and practices as powerful tools to economically empower women and combat their poverty.

In the private sector, GRP can similarly play an important role, in particular, by encouraging and incentivizing “gender-responsive business practices”. Gender-responsive business practices are corporate business practices that seek to promote gender equality and women’s advancement, for example, policy and programmes that promote equal pay, equal representation in the workforce, equal access to promotions, equal access to business opportunities, increasing the number of women in leadership positions, flexible working arrangements, strong child care, paternity and maternity policies and strong sexual harassment and gender-based violence policies. Firstly, like public buyers, private buyers may use their purchasing power to specifically promote women’s advancement by opting to buy goods and services from women-owned

1 For definitions of “gender equality” and “women’s advancement”, see “Definitions” in Section II above.

2 UN Women and the ILO, 2021. “Rethinking Gender-Responsive Procurement: Enabling an Ecosystem for Women’s Economic Empowerment.” New York and Geneva.

3 UN Women, “Women Empowerment Principle 5: Guidance Note” (2020).

4 UN Women, “The Power of Procurement: How to Source from Women-owned Businesses” (2017).

5 See “Definitions” in Section II above for more detailed definitions.

businesses.<sup>6</sup> Secondly, large companies—especially top-tier buyers such as multinational companies with significant purchasing power—may use their leverage within their sphere of influence by encouraging their business partners to embrace gender equality and women’s advancement within their own corporate policies and practices, e.g. by requiring suppliers to take measures to promote equal pay or greater women’s representation in leadership positions or by insisting that they implement women’s mentoring programmes or flexible working arrangements.<sup>7</sup> By specifically buying from women-owned businesses while simultaneously encouraging their suppliers to adopt policies and practices that promote women’s advancement and gender equality, private buyers are able to use GRP as an effective tool to advance women’s rights and promote substantive equality within the workplace and the wider economy.

The next section, **Part IV**, provides the key findings of the report. **Part V** compares both public and private policy and measures seeking to promote gender-responsive procurement around the globe.

One very important consideration with respect to gender-responsive procurement is whether such policy or relevant public or private sector measures violate the fundamental principles of equality and non-discrimination. This is a legitimate and important legal consideration where such policy and measures seek to provide preferential treatment to women compared to men. The fundamental principles of equal

treatment and non-discrimination are explicitly referred to in many international human rights instruments and within national constitutions and legislative provisions. While any form of preferential treatment inherently goes against these fundamental principles, the report will also detail the many international and national legal norms that explicitly permit preferential treatment under strictly defined conditions related to proportionality, transparency and due diligence. Naturally, in the absence of an explicit basis within domestic legislation for GRP measures, both public and private actors will lack clarity and legal certainty in relation to the legality of relevant measures. To this end, **Part VI** of the report explores international and national norms which may provide a legal basis for gender-responsive procurement. The list of participating countries to the study can be found in the Annex.

## Methodology

In preparing this report, a questionnaire was completed by procurement lawyers in 30 different jurisdictions from across the globe. The questionnaire aimed to identify innovative practices and interesting examples of legal, regulatory and policy measures that various countries have already adopted in an attempt to promote GRP. A selected number of case studies have been extracted from the questionnaires and are analysed and discussed in this report. All actors in the procurement system are encouraged to use these innovative case studies from other jurisdictions to inspire their local advocacy efforts.

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6 To this end, Principle 5 of the Women’s Empowerment Principles (WEPs) specifically advises corporate signatories to establish supplier diversity programmes that actively seek to expand business relationships with women-owned enterprises and support their access to businesses.

7 In this regard, Principle 5 of the WEPs advises corporate signatories to require their business partners, contractors and suppliers to also adopt the WEPs.

# IV. OVERVIEW

The survey finds that **only a minority of governments have introduced targeted measures to specifically promote GRP**. However, **a handful of governments around the globe are finding innovative ways to enable and incentivize GRP in both the public and private sectors**. Such governments are promoting GRP at two levels: firstly, by using their role as a regulator and carefully structuring the rules that govern public and private procurement processes and, secondly, by using purchasing and sourcing policies and practices as powerful tools to economically empower women.

The report identifies a wide range of measures and policies developed and deployed by regulators around the globe seeking to impact public and private procurement practices with the aim of promoting gender equality and women’s advancement. The table below presents an overview of the identified

measures (Table 1). **While some measures are targeted specifically at GRP, others more broadly seek to promote “gender-responsive business practices”**, in other words, corporate business practices that seek to promote gender equality and women’s advancement in the workplace.<sup>8</sup>

**TABLE 1**  
**Overview of regulatory and policy measures related to GRP**

Identified regulatory and policy measures	Type of measure	Primary objective of the measure
Including gender-related criteria or considerations into bidding (evaluation) frameworks/proceedings (e.g. <b>Brazil, Canada, Italy, Switzerland</b> and <b>Viet Nam</b> ).	Exclusion grounds, selection criteria, award criteria and tie-breaker provisions	Increasing the amount of procurement contracts awarded to women-owned businesses, women entrepreneurs and incentivizing and rewarding businesses adopting strong gender-responsive business practices.
Establishing gender equality–related obligations for successful bidders (e.g. <b>Canada</b> and the <b>Philippines</b> ).	Contract performance conditions	Encouraging companies to adopt gender-responsive business practices.
Setting procurement-related quotas for suppliers which meet key criteria in relation to gender equality (e.g. <b>India</b> and <b>Senegal</b> ).	Quotas	Increasing the amount of procurement contracts awarded to women-owned businesses, women entrepreneurs and incentivizing and rewarding businesses adopting strong gender-responsive business practices.
Development of certification, evaluation or points-based programmes for companies based on gender equality–related credentials (e.g. <b>Argentina, Chile, Costa Rica, Italy, South Africa</b> and <b>Viet Nam</b> ).	Certifications and evaluation programmes	Incentivizing companies to adopt gender-responsive business practices and facilitating the identification of such companies.

<sup>8</sup> For a definition of “gender-responsive business practices”, see “Definitions” in Section I above.

Identified regulatory and policy measures	Type of measure	Primary objective of the measure
Financing, grant-making or other training programmes made available by public and private buyers to women entrepreneurs for their business advancement (e.g. <b>Egypt, India, Jordan, Pakistan, Senegal and Türkiye</b> ).	Financing and grant-making	Increasing the number of women-owned businesses and women entrepreneurs and making them more competitive.
Tax and other incentive-based programmes in support of companies with strong gender equality credentials and/or women entrepreneurs (e.g. <b>Türkiye and Viet Nam</b> ).	Tax incentives	Increasing the number of women-owned businesses and women entrepreneurs and making them more competitive. Incentivizing companies to adopt gender-responsive business practices.
Development of measures, whether incentive-based or principle-based, promoting gender advancement in the context of public planning, budgeting and procurement (e.g. <b>Indonesia, the Philippines and Türkiye</b> ).	Standard setting	Mainstreaming gender equality and women's advancement within public planning, budgeting and procurement frameworks.
Governance, transparency, disclosure, reporting and/or monitoring regimes related to gender-equality metrics (in particular, for publicly listed companies), e.g. in the context of environmental, social and governance (ESG) and corporate sustainability regulation (e.g. <b>Chile, India, the Philippines, South Africa, Türkiye, the United Arab Emirates, Uzbekistan and Viet Nam</b> ).	Reporting and disclosure regimes	Incentivizing companies to adopt gender-responsive business practices and facilitating the identification of such companies.

One very important consideration with respect to GRP is whether such policy or relevant public or private sector measures may violate the fundamental principles of equality and non-discrimination. This is a legitimate and important legal consideration where such policy and measures seek to provide preferential treatment to women compared to men.

The fundamental principles of equal treatment and non-discrimination are explicitly referred to in many international human rights instruments and within national constitutions and legislative provisions. Whilst any form of preferential treatment inherently goes against these fundamental principles, **this report also details international and national legal norms that explicitly permit preferential treatment under strictly defined conditions** related to proportionality, transparency and due diligence.

In particular, **Article 4 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) permits states to adopt temporary**

**special measures aimed at accelerating de facto equality between men and women.** Such measures are not considered to be discriminatory under the Convention but must be discontinued when the objectives of equality of opportunity and treatment have been achieved.

The report documents that similarly, **within national law, several states have introduced legislation to clarify the permissibility of preferential treatment regimes. A handful of states have taken a step further to provide a clear basis for GRP within national procurement regulations.**

However, in the majority of surveyed states, it is still questionable whether certain GRP measures might violate constitutional principles and relevant legislation related to equality and non-discrimination. This finding points to the need for national law reform if advocates of GRP want to create a more favourable legal and policy framework for public and private buyers seeking to implement GRP in their policies and practices.

# V. A REVIEW OF PUBLIC AND PRIVATE REGULATORY AND POLICY MEASURES PROMOTING GRP

The research for this report has identified a wide range of measures and policies developed and deployed by regulators around the globe seeking to impact public and private procurement practices with the aim of promoting gender equality and women's advancement (see Table 1 in Part IV for a full overview of the identified measures).

This part of the report will explore these measures while also discussing several private sector initiatives which have sought to increase market access and market share for women-owned businesses, women entrepreneurs and, more broadly, businesses adopting gender-responsive business practices. It is important to note that some of the measures below directly promote GRP,

as has been defined in this report, whereas others have a wider scope, and are more broadly focused on women's advancement and gender equality, whether in the context of procurement, or in general. Such measures, with a wider scope, may nevertheless indirectly support the adoption of GRP policies and practices by public or private buyers.

## a. Including gender-related criteria or considerations into bidding frameworks and proceedings (evaluation)

During the procurement process, a public or private buyer will look into whether competing bidders comply with the stipulated economic, technical and financial criteria. These criteria enable buyers to assess whether the bidders are sufficiently capable of performing the contract. Gender-responsive procurement recognizes that the manner in which bidding notices are drafted and evaluation frameworks are constructed can impede participation by women-owned businesses and women entrepreneurs (for example, due to challenges to meet certain financial requirements). Equally, GRP recognizes that bidding notices and evaluation frameworks can be developed in a way that can proactively encourage and enable participation in tenders by women-owned businesses and women entrepreneurs, and in doing so promoting gender-responsive business practices among potential suppliers.

The measures discussed below are measures that both public contracting authorities and private buyers may introduce into bidding frameworks to assist with the

evaluation and selection of bidders and suppliers. Such measures include: (i) exclusion grounds (on the basis of which certain potential bidders may be precluded from participating in a tender or from being awarded a contract; (ii) selection criteria (on the basis of which competing bidders may be assessed and ranked); and (iii) tie-breaker provisions (on the basis of which a winner may be chosen from among two or more equally competitive bids). Such measures have the primary objective of increasing the amount (volume) of procurement contracts awarded to women-owned businesses and women entrepreneurs and of incentivizing and rewarding businesses adopting strong gender-responsive business practices.

### Exclusion grounds

On top of the basic criteria for fulfilling the bid, some jurisdictions allow contracting authorities to include gender-related criteria or considerations into the bidding or evaluation frameworks. One way in which

this can be achieved is by using gender-related criteria as grounds for excluding certain bidders. For example, in **Switzerland**, the Federal Equal Opportunities Office has included the principle of equal pay for men and women in the national legislation on public procurement contracts.<sup>9</sup> Companies that are competing for a public procurement contract are required to subscribe to the principle of equal pay and must sign a declaration which confirms that they apply the principle in their company. Companies that are unable to provide this guarantee are excluded from participating in the contract. The Swiss public procurement offices are also empowered to conduct equal pay audits, either directly themselves or by enlisting external assistance. Where pay discrimination is detected in a tendering company, the relevant public procurement office has various options at its disposal, including issuing a contract penalty, withdrawing acceptance of the bid, excluding the bidder from the tender procedure or terminating the contract.

In **Italy**, recently adopted provisions<sup>10</sup> introduced a new ground of exclusion from public procurement projects that are financed with funding obtained as a result of the COVID-19 pandemic. Public bidders employing more than 50 employees (who are therefore obliged to make a report on equality between men and women staff pursuant to Italian equality legislation)<sup>11</sup> must, on penalty of exclusion from the tender procedure, produce a copy of the said report when submitting their bid, together with a certificate attesting its consistency with the report submitted to the company trade union representatives and regional equality advisors. The report is required to include an analysis of the gender pay gap (an analysis of wages, both salary base and total compensation) and differences in benefits; the employment situation of women and men employees, including their overall numbers and their professional distribution in the

organization; information on dismissals, hires, onboarding and training; retirement, promotion and career paths; work-life balance; and diversity and inclusion policies.

### Selection criteria and tie-breaker provisions

In a number of countries around the world, public authorities currently include gender-related criteria or considerations which promote GRP in their procurement bidding or evaluation frameworks, including **Brazil**, **Canada**, **Palestine** and **Viet Nam**. Gender-related criteria or considerations can be integrated into bidding or evaluation frameworks in the context of procurement, in order to allow the relevant awarding entity to consider gender-related aspects when evaluating the tenders submitted. This could mean introducing measures that allow bidders who employ a certain percentage of women workers to be treated preferentially, or generally sourcing from suppliers that internally advance gender equality or the empowerment of women. Under **Brazil's** new national procurement law, there are mandatory and optional provisions for a bidding notice. One optional provision which may be included is that evidence of the development of workplace gender equality by the bidder may be considered if a tie-breaker situation arises in bidding proceedings.<sup>12</sup> In **Chile**, contracting authorities are also able to incorporate gender equality as a tie-breaking criterion in a bidding process.<sup>13</sup> The same Chilean directive (Directive 20) allows the incorporation of gender equality criteria into the bidding conditions, and even allows gender criteria to be a cause for direct procurement in purchases of less than 10 Unidad Tributaria Mensual (Chilean Tax Unit).

**Canada** and **Palestine**<sup>14</sup> allow contracting authorities more autonomy, as both countries have legislative mechanisms in place relating to public procurement

9 Federal Act on Public Procurement of 16 December 1994, Switzerland.

10 Reference is made to (a) Law Decree no. 77/2021 ("*Decreto Semplificazioni-bis*") aimed at encouraging, in the context of public contracts financed with resources obtained with the pandemic, the labour inclusion of women and young people, by requiring contracting authorities to include in their calls for tender as necessary or rewarding requirements criteria geared towards an increase in women's employment. Law Decree no. 77/2021 introduced article 47. It shall be further noted that the possibility to extend such requirements to all public procurement procedures is currently under discussion, in the context of the reformation of the Italian Public Procurement Code; (b) Decree of the Presidency of the Council of Ministers of 7 December 2021, containing guidelines aimed at favouring equal gender and generational opportunities in public contracts and implementing art. 47; and (c) Law no. 162/2021, which introduced article 46 bis to the Equal Opportunities Code (Legislative Decree no. 198/2006) regarding the "Equality Certification".

11 Article 46 of the Equal Opportunities Code (2021), Italy.

12 National Procurement Law, Federal Law (2021), Brazil.

13 Public Procurement Directive No. 17 and No. 20 of the ChileCompra Directorate (2015) amended by resolution 589-B on 3 September (2021), Chile.

14 Decision No. (4) of 2007 concerning the Promulgation of the Regulation on Supplies and Purchases of the Palestinian General Intelligence (2007), Palestine.

to allow contracts to be awarded based on preference in the event that the other bidding criteria are satisfied. This means that contracting authorities who decide to make gender-related considerations a priority can impose these criteria and implement GRP without falling foul of the law.

In **Viet Nam**, in the event of a tiebreaker in domestic bidding on consultation services and building,<sup>15</sup> those who employ a certain number of women will be treated preferentially.<sup>16</sup> Domestic bidding projects providing advisory services, non-advisory services or construction and installation are within the scope of this mechanism. Bidders will be treated preferentially if 25 per cent of their total workforce consists of women who have signed labour contracts of a minimum of three months.<sup>17</sup> The same mechanism allows bidders to be treated preferentially if 25 per cent of their total workforce consists of wounded soldiers or disabled people with labour contracts of a minimum of three months, or if they are a micro-company or small company. There is a similar mechanism being introduced in **Brazil**, where contracting authorities may opt to include in a bidding notice the requirement that a minimum percentage of the workforce carrying out the contract is constituted of women victims of domestic violence.<sup>18</sup>

In **Italy**, recent legislation<sup>19</sup> requires public buyers to include criteria in calls for tender to promote gender equality and women's employment (in addition to youth

entrepreneurship, the employment and inclusion of disabled people and the recruitment of young people under the age of 36), either as necessary requirements and/or as additional reward requirements of the bid. The legislation also requires that bidders must include in their bid the undertaking to ensure, in the event of the award of the contract, that 30 per cent of the recruitment required for the performance of the contract or for the implementation of related or instrumental activities is for the employment of both women and young people. Recently adopted guidelines have further clarified how to calculate the 30 per cent quota stating, for instance, that young people's employment and women's employment are two separate policy targets and should therefore be met independently in the awarding procedures (i.e. not combined).

Allowing gender-related criteria to be used as "tie-breakers" in procurement awards can effectively introduce GRP without compromising on the quality of bidders. This also means it becomes commercially sensible for bidders to improve the position of gender equality within their businesses, which is likely to result in improvement of gender equality throughout the supply chain. Some of the examples of GRP described above are clear and represent active measures; some may need further investigation but can potentially be used for GRP and will be explored further in Part VI below.

### Tunisia: e-Procurement's potential for gender-responsive procurement

In 2013, the Tunisian government, in collaboration with the now UK Foreign, Commonwealth and Development Office and the Korean International Cooperation Agency, introduced the comprehensive Tunisian public e-procurement environment "TUNEPS", aimed at achieving a fully fledged digital system. As of September 2019, Tunisian law made e-procurement mandatory for all entities.<sup>20</sup> The mandated use of such a tool is uncommon at a state-level—in fact, in the European Union (EU), despite an e-procurement system being implemented in 2018, not all EU members are fully implementing it.

A review undertaken by the Tunisian government, the Tunisian public procurement authority and the Organisation for Economic Co-Operation and Development (OECD) in 2020 focused on improving accessibility to TUNEPS for vulnerable groups, e.g. small and medium-sized enterprises (SMEs), young

15 The Vietnamese Law on Bidding, 2013 (43/2013/QH13), Vietnam.

16 Article 1 of the Law on Bidding (2013), Viet Nam.

17 Ibid.

18 National Public Procurement Law, Federal Law (2021), Brazil.

19 See footnote 9.

20 New paragraph 2 of the article 77 of the decree n°1039-2014 dated 13 March 2014 as completed and modified by the government decree n°416-2018 dated 11 May 2018, Tunisia.



entrepreneurs, women-owned businesses, artisans and businesses in marginalized areas.<sup>21</sup> The review, written together with the Tunisian public procurement authority, achieved three principal objectives:

1. Outlining how e-procurement can be a valuable tool in creating economic opportunities for vulnerable groups, including women-owned businesses.
2. Assessing the technical assistance activities provided by the government aimed at strengthening the capacity of different users of the e-procurement system in Tunisia.
3. Addressing existing gaps in the e-procurement system to enhance future prosperity of the Tunisian economy, with a particular eye on vulnerable groups in society.

The review produced policy recommendations for improving TUNEPS and increasing access to procurement for vulnerable groups, including women. Among other things, and as a result of the review:

- a) The drafters recommended that the government ramp up its relationship with business associations and other related groups to disseminate information and training on TUNEPS to provide greater access to women-owned businesses and other vulnerable groups. Crucially, the practice of liaising with key stakeholders ensures that the procurement system is aligned with suppliers' expectations and needs, and the reality of the economy.
- b) The drafters further recommended, in support of vulnerable groups, that specific indicators could be developed to better identify suppliers. At present, suppliers are only required to provide information on their sector. More data on suppliers could be collected at this stage, such as whether a supplier is a women-owned business. Visibility of the pool of suppliers allows, in turn, the introduction of more targeted policy actions to support these specific groups.

The measures above indicate not only Tunisia's dedication to promoting GRP within its own public procurement framework, but a desire to continue to build on the current model alongside key stakeholders in order to harmonize the process from each parties' perspective.

## b. Establishing obligations related to gender equality for successful bidders

### Performance conditions

In some jurisdictions, obligations related to gender equality can be imposed on the successful bidder after the bidding process has taken place and once the successful bidder has been selected. For example, contracting authorities may draft clauses which specify this as part of the contract performance. Notification of the performance conditions should be given in the contract announcement or in the specifications. These performance conditions are contractual obligations that the contractor must accept and which relate to the performance of the contract.

A distinction is made in the procurement process between selection criteria on the one hand, as discussed above, and performance conditions on the other. In a case where a certain gender-related measure cannot be imposed as a selection criterion, as it would be in

contravention with the law, it may be the case that such gender-related measures may nonetheless be permitted as a "performance condition", depending on the legal framework. Such performance conditions can be used by both public and private buyers to exert leverage within their sphere of influence by requiring their suppliers to adopt gender-responsive business practices.

Importantly, buyers are advised to conduct market research in order to ascertain whether such a performance condition is feasible in practice. For example, if market research reveals that the situation on the labour market is such that not enough workers of one gender are available for particular positions or lines of business, it would be difficult for staff of this gender to be deployed for these positions and would therefore not be appropriate in this instance.

21 OECD, "Improving the E-procurement Environment in Tunisia: Supporting vulnerable groups in gaining better access to TUNEPS" (2021).

In **Canada**, the government’s Federal Contractors Program requires that contractors who are awarded a contract of at least CAD 1 million “make reasonable efforts” to hire people from the four designated equity groups under the Employment Equity Act: women, Aboriginal people, people with disabilities and members of visible minorities.<sup>22</sup> This is an ongoing obligation that includes requirements to create goals related to diversity as well as other monitoring and reporting requirements. Even at the bidding stage prior to being awarded the contract, contractors who bid on an initial goods and services contract estimated at CAD 1 million or more (including applicable taxes) with the Government of Canada must first certify their commitment to implement employment equity by signing the Agreement to Implement Employment Equity prior to the contract award.

This type of measure could similarly be implemented in the private sphere, with respect to private buyers, in particular where those buying companies are large multinational corporations, who have significant leverage or influence over the businesses in their supply chain. Large businesses may effectively be in a position to dictate contractual terms, especially to SME suppliers.

### c. Setting procurement-related quotas in relation to suppliers which meet key criteria on gender equality

While sometimes controversial, quotas are another measure that both public and private buyers can use—provided such measures are consistent with relevant national legislation—to promote GRP. For example, public authorities may specifically earmark a certain percentage of annual procurement for women-owned businesses or businesses demonstrating gender-responsive business practices.

In 2018, the Government of **India** made a special provision for micro and small businesses owned by women, whereby, out of the total annual procurement by the Government of India, 3 per cent of the 25 per cent quota reserved for micro and small enterprises was earmarked for women-owned enterprises.<sup>23</sup> Some private companies in **India** have adopted a similar

In order to be most effective, it would likely be necessary to introduce continued checks on the fulfilment of the obligations, by establishing regular monitoring and reporting requirements. It would also increase the effectiveness of the measure to ensure these obligations are drafted in such a way to allow remedies to be sought under the contract if these obligations are not met, as well as testing to ensure that the obligations are set at an appropriate and reasonable level for businesses to be able to meet realistically.

Another example is provided by the **Philippines** where the national Public–Private Partnership Governing Board (the body primarily responsible for developing policy on public–private partnership initiatives in the country) requires that implementing agencies observe gender-related safeguard considerations during various stages of the project life cycle. In particular, during the procurement phase of such projects, implementing agencies are required to undertake a gender analysis to identify gender issues within the proposed project. Implementing agencies are then required to incorporate gender-related goals, objectives, outcomes and outputs into the project.

approach by setting internal targets on sourcing from women-owned businesses. For example, Hindustan Unilever Limited’s sourcing policy includes preferential sourcing from women-owned businesses, and sourcing from sustainable tea estates employing a majority of women tea workers.<sup>24</sup>

Similarly, Procter and Gamble committed to sourcing US\$30 million of goods and services from women-owned businesses in India over a three-year period, as part of its global commitment to promote greater gender equality in line with the United Nation’s Sustainable Development Goals. P&G partnered with WEConnect India, a non-profit organization that connects women-owned businesses to qualified buyers, in order to develop capability among women

22 Employment Equity Act S.C. 1995, c. 44 (1995), Canada.

23 Public Procurement Policy for Micro and Small Enterprises (MSEs) Amendment Order (2018), India. Interestingly, in 2007, the state of Tamil Nadu in India issued directions under the Tamil Nadu Transparency in Tender Act 1998 to procure 65 per cent (or up to the optimum level that could be supplied by the said societies) of the requirement of “weaning food” directly from women’s industrial cooperative societies. This direction also includes entrusting work related to stitching school uniforms (intended for free supply to school going children) to the women’s cooperative tailoring societies (see Tamil Nadu Transparency in Tender Act 1998 as revised in 2007).

24 Unilever, “Unilever Responsible Sourcing Policy: Working in Partnership with our Suppliers” (2017), India.

entrepreneurs through training and workshops.<sup>25</sup> Another example of success was Walmart India (the wholly owned subsidiary of Walmart Stores) which achieved its goal of doubling its sourcing from women-owned domestic businesses. By January 2018, Walmart India was said to be sourcing from 40 women-owned businesses, 10 of which were also part of its inaugural Women Entrepreneurship Development Programme.<sup>26</sup>

In 2012, the **Dominican Republic** launched the “Dominican Sustainable and Inclusive Procurement Model”, a strategy that focuses on mainstreaming the gender equality perspective to increase and eventually achieve women’s equal participation as suppliers to the state. The General Directorate of Public Procurement, the governing body of the National Public Contracting System (**SNCP**), led the process and became the first public entity to develop and implement a system focusing on the inclusion of women-owned enterprises and SMEs in Latin America and the Caribbean. Their experience was developed in the context of a law to promote the participation of SMEs, which establishes the State’s obligation to allocate

15 per cent of the procurement budget of state ministries to purchases from SMEs, and 20 per cent to purchases from women-led SMEs.<sup>27</sup>

More recently, with the influence of UN Women through the We-Fi project, **Senegal** has introduced a preferential clause of 2 per cent of contracts reserved for women entrepreneurs into the regulations on public–private partnerships.<sup>28</sup> For public procurement, a decree on a small business act for women and youth has been drafted and awaits adoption. This small business act provides for 15 per cent of public contracts to be reserved for women’s and youth enterprises in Senegal.

Naturally, the implementation of quotas or financial targets can be effective, as long as there are enough suppliers in the market of appropriate quality owned by women, or meeting gender-responsive criteria. This can be safeguarded in the long term by supporting initiatives which seek to nourish and support women entrepreneurs and women-owned businesses in relevant sectors.

#### d. Development of certification, ranking or points-based programmes for companies based on credentials related to gender equality

The development of certification, ranking or points-based programmes for companies based on gender-related credentials entails the classification of certain businesses based on their adoption of identified gender-responsive business practices, making it easier for buyers to identify and promote such businesses within a given sector. **Argentina, Chile, Costa Rica, Italy** and **Viet Nam** provide some interesting examples of this work.

**Chile** offers women-owned businesses certification in the form of ‘seals’, such as the Women’s Business Seal. This seal was created in order to facilitate the implementation of Directive 20 (referred to above) and is awarded to businesses led or majority owned by women (in the case of legal entities, the business

must be at least 50 per cent owned by one or more women, and its legal representative or general manager must be a woman).<sup>29</sup> The Seal reportedly led to an increase of 25 per cent in the participation of women-owned businesses on the ChileCompra—the central procurement body in Chile—e-procurement platform. Separately, the Women’s Construction Seal (Sello Mujer Construcción) was created to encourage women’s participation in the construction industry and overcome the wage gap in the field. The Women’s Construction Seal grants additional points to companies whose staff is composed of at least 10 per cent women when applying for tenders for housing or urban works with financing from the Ministry of Housing and Urban Planning and to those companies that commit to hiring a workforce for the project composed of at least

25 In a statement from 30 January 2018, Procter & Gamble announced that it would source US\$30 million from women-owned businesses across India over the next three years.

26 More information on Walmart’s collaboration with WEConnect International and the Women’s Entrepreneurship Development Programme can be found [here](#).

27 UN Women, Public Procurement with a Gender Perspective. Achievements and challenges in the revitalization of women-led enterprises in Latin America as a driver of the post-COVID-19 recovery (2022).

28 See Law No. 2021-23 of 2 March 2021 and Decree 2021-1443 of 27 October 2021, Senegal.

29 Public Procurement Directive No. 20 of the Public Procurement and Contracting Directorate (2015) amended by resolution 589-B on September 3 (2021), Chile.

10 per cent women.<sup>30</sup> Therefore, companies that have a higher proportion of women employees will rank higher in procurement processes and increase their chance of winning a contract. This April 2021 policy is expected to be extended to suppliers of goods and services. There is also a voluntary certificate (Sello Iguale Conciliación), granted by the Ministry of Women and Gender Equality, which allows organizations to identify and overcome gender inequalities and incorporate measures to reconcile personal, family and work life, among other objectives. Although voluntary, this certificate may be considered in procurement decisions and is seen to improve a company's reputation in the market.<sup>31</sup>

Similarly in **Argentina**, the Government of the City of Buenos Aires established the Women's Company Seal (Sello Empresa Mujer) in 2019.<sup>32</sup> The seal is a mechanism for the voluntary identification and certification of women-led and women-owned businesses registered with the Computerized and Unique Registry of Public Suppliers (**RIUPP**) of the City of Buenos Aires. The Women's Company Seal may be granted to legal entities duly registered with the RIUPP, either whose legitimate administrator is a woman, or which are women-owned (where ownership of 50 per cent or more of the company belongs to one or more women), or who are women-led (where 50 per cent or more of the administration and direction of the business is led by one or more women). Entities who obtain the seal shall have preference for their offers in those contracts that incorporate sustainability criteria with a gender perspective.

In **Argentina**, in the provinces of Río Negro and Neuquén, efforts to promote GRP began with the establishment of the Registry of Companies Owned by Women and the Registry of Women Entrepreneurs. In Río Negro, the Economic Development Agency launched in 2020 the "Single Registry of Women Entrepreneurs" with an associated certificate, which led the provincial government to implement a 5 per cent rate bonus in access to financing for those registered. This bonus generated a sustained 10 per cent annual increase in women's access to financing. Today, the Economic Development Agency is working on developing

a Women's Business Guide to expand accessibility to public purchasing decision makers.

In **Italy**, a so-called "Equality Certification" has recently been introduced, which is aimed at certifying the policies and concrete measures taken by employers to reduce the gender gap in relation to growth opportunities in the company, equal pay for equal work, gender management policies and maternity protection.<sup>33</sup>

In **Costa Rica**, the National Institute of Women (**INAMU**) has been working on the development of policies and actions for gender equality in order to close the gaps between women and men in employment, in both public and private organizations in the country. Under the auspices of the United Nations Development Programme (**UNDP**) Gender Equality Seal Certification Programme, INAMU has created the Gender Equality Seal, which is a Business Certification Programme for Gender Equality.<sup>34</sup> Earning the Seal requires various actions including: the formulation of written commitment to gender equality; establishment of a gender equality committee; training of senior management and staff on gender equality; undertaking an internal organizational assessment of the company's policies and practices; development of a company-wide policy and plan of action for gender equality; implementation of the gender equality plan of action; and conducting an external audit.<sup>35</sup> The organizations granted the Seal are registered and published on INAMU's website. The renewal of the award must be performed every three years, as established in the Scheme for the Certification of Management Systems for Gender Equality in the Workplace.

Offering certification, whether in the form of a seal or an honorary award, can provide businesses with both a reputational benefit, as well as a more tangible benefit through preferential treatment in bidding processes. The identification of women-owned and gender-responsive businesses can also be an important stepping stone to facilitate the implementation of other GRP measures, such as setting quotas or financial targets for these businesses, as discussed above. It is clear how certification can operate as affirmative action for women-owned businesses, while encouraging other businesses to include women in their ownership and

30 More information on the Women's Construction Seal can be found [here](#).

31 Regulation NCh: 3262:2012 (2012), Chile.

32 Resolution MEyFGCBA N° 2302/2019 (2019), Argentina.

33 Equal Opportunities Code (2021), Italy.

34 Regulations for the award and use of the gender equality stamp (2016), Costa Rica.

35 For more information on the UNDP Gender Equality Seal Certification Programme, see [here](#).

leadership structures. Whether this inclusion will be meaningful in all cases will depend on the strength and rigour of the due diligence process before certification is awarded. Establishing a certification structure and an

appropriate due diligence process to ensure and uphold the legitimacy and reliability of the certification may initially require an input and expenditure commitment from contracting authorities.

### South Africa: GRP in a points-based programme

South Africa takes a different approach to certification from other jurisdictions, by operating a points-based scheme for public procurement based on affirmative action for disadvantaged groups. This means that a certain proportion of points available in a bidding framework are awarded based on a rating system. Bidders are given a rating based on best practice in the areas of gender equality, along with other diversity and inclusion measures. Applying a rating based on commitments to gender equality, as well as actions taken, reporting and results within a business, and using this in a points-based procurement system can effectively integrate GRP measures into the procurement process.

South Africa's points-based scheme is based on the Preferential Procurement Policy Framework Act 2000 ("**PPPFA**")<sup>36</sup> with a rating system stemming from the Broad-based Black Economic Empowerment Act 2003 ("**BEE Act**").<sup>37</sup> In South Africa, black people, and particularly women, young people, people with disabilities and those living in rural areas face the highest rates of unemployment. The BEE Act is therefore intended to promote the inclusion of black people—specifically black women—by offering these groups preferential treatment in procurement bidding processes.

South Africa's Department of Trade and Industry issues Codes of Good Practice on BEE ("**Codes**"), which include indicators to measure BEE and the weighting to be attached to those indicators. The indicators enable the scoring of companies' BEE ratings. There are generic Codes that apply across various sectors and Codes that apply to specific sectors, including financial services, defence, agriculture and construction. The indicators in the Codes make provision for the voting rights and economic interests of black women in companies and the procurement spend from black women-owned businesses. Accordingly, companies are generally likely to score a favorable BEE rating if they have black women ownership and procure goods and services from black women-owned suppliers.

The PPPFA incorporates the 90/10 and 80/20 preference point procurement system. In brief, this system enables bidders to score up to 10 or 20 points (out of 100) based on their BEE rating (and in certain instances the BEE rating of their subcontractors), depending on which system is applied (the value of the tender usually determines which system is applicable). Generally, the bidder who scores the highest points will be awarded the tender, unless objective criteria justify the award to another bidder that did not score the highest points. An organ of state may be exempted from applying certain provisions of the PPPFA if it is in the interest of national security, the bidder is an international supplier, or it is in the public interest.<sup>38</sup>

36 Preferential Procurement Policy Framework Act (2000), South Africa.

37 Black Economic Empowerment (BEE) Act (2003), South Africa.

38 Section 3 of the Preferential Procurement Policy Framework Act 2000, South Africa. Note: The Supreme Court of Appeal handed down a judgment on 8 September 2020 decreeing that the PPPFA regulations are invalid. In particular, it found that the pre-qualification criteria in the regulations were inconsistent with section 217(1) of the Constitution which provides "when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective". The order was suspended for a period of 12 months (i.e. up to 8 September 2021) in order for the defects to be remedied by the Minister.

## e. Financing, grant-making and other training programmes made available by public and private buyers to women entrepreneurs for their business advancement

By providing financing, grants and other incentives directly to women entrepreneurs and women-owned businesses, public and private buyers can equip women in business with the tools—often in the form of finance—needed to more readily enter or establish a greater presence in their relevant marketplace. Support will not always take the form of financial assistance, however, and financial grants may be supplemented by training programmes.

### Government-led and government-backed programmes

In **Egypt, India, Jordan, Pakistan, Senegal** and **Türkiye**, public authorities have developed initiatives and programmes targeted at improving gender equality in the government marketplace.

**Pakistan** operates the Women Entrepreneurship Development System (**WEDS**), an initiative of the National Productivity Organization within the Ministry of Industries and Production.<sup>39</sup> The WEDS initiative, which is currently operational in the southern parts of the Punjab province, aims to facilitate home-based women’s businesses in converting into bigger commercial ventures. The offerings of the WEDS include providing executive-style office spaces from which women can work, one-to-one counselling and business development services, and broader training on the advancement of business. Crucially, the WEDS also makes available to participants various micro-finance facilities. In **Türkiye**, the Small and Medium Enterprises Development Organization affiliated with the Ministry of Industry and Technology provides women entrepreneurs with grants and loans on more advantageous terms and conditions than other recipients of financing.<sup>40</sup>

In **Egypt**, the Technology Innovation and Entrepreneurship Centre, supervised by the

Ministry of Telecommunication and Information Technology, launched an initiative called the “Women Entrepreneurship Program” or the “**She Program**”, which aims to support early-stage women entrepreneurs operating in the IT sector. This is achieved by training women entrepreneurs on managing start-ups and creating methodologies and concepts throughout the 27 Egyptian governorates.<sup>41</sup> In addition to this initiative, the Small, Medium and Micro Enterprise Development Agency works on supporting small, medium and micro enterprises through policies, strategic plans, capacity-building and finance. The agency has itself recently received a gender seal certificate from UN Women in recognition of its efforts in the field of women’s empowerment. This seal is considered a global certification given to public institutions that work on gender equality and women’s empowerment.<sup>42</sup>

In March 2021, UN Women and the **Senegalese** Public Procurement Regulatory Authority launched a training programme intending to empower 500 women entrepreneurs on public procurement procedures. It was also planned that 70 civil servants from the contracting authorities (ministries and other public structures) were to be trained on gender-responsive procurement.<sup>43</sup>

In **Jordan**, the government has strengthened its commitment in recent years to gender equality and women’s social and economic empowerment by creating a National Strategy for Women (**NSW**) that prioritizes women’s economic empowerment as part of its main objectives. The semi-governmental national coordinating body, the Jordanian National Commission for Women, has developed programmes seeking to promote entrepreneurship among women and advance their ability to access assets and own businesses. A key objective is to support and encourage women entrepreneurs, SME owners and members of

39 More information on the Women Entrepreneurship Development System (WEDS) in Pakistan can be found [here](#).

40 More information on the support offered by affiliated Small and Medium Enterprises Development Organization in Türkiye can be found [here](#).

41 For more information on the “She Program” in Egypt, please visit the program’s official webpage [here](#).

42 Further information can be found [here](#).

43 The training programme formed part of the Women Entrepreneurs Finance Initiative (We-Fi initiative); more information can be found [here](#). To date, out of the target of 500, 287 women entrepreneurs have benefited from capacity-building sessions on various topics relating to procurement methodology, procedures and contracting. In addition to this training programme, UN Women strengthened 30 women entrepreneurs’ skills on “Gender and public procurement in the context of COVID-19: what prospects for women entrepreneurs in Senegal?”

cooperative organizations. This is realized through the advancement of their administrative capabilities and by providing technical support, including supporting the development of their skills to enable them to own property and access financial resources with a view to establishing their own businesses. The NSW also aims to support women in establishing businesses, from official registration to guaranteeing the growth of the business, sustainability, and introducing and integrating them into supply chains and local and international markets. It also aims to support them in taking part in and competing in tenders and bids and providing them with support in using and taking advantage of information technology and modern means of communication to ensure the growth of their businesses.<sup>44</sup>

Similarly, a programme backed by the **Indian** government, launched in January 2019, has sought to promote women's entrepreneurship. The "Womaniya" Government e-Marketplace is an initiative to facilitate women entrepreneurs and women's self-help groups to sell various products—handicrafts and handloom products, accessories, jute and coir products, cosmetics, food and beverage products, organic spices, wood crafts, sculptures, home decor and office furnishings—directly to various Government ministries, departments and institutions.<sup>45</sup> The homepage of the e-marketplace website informs procurement officers in various government ministries, departments and central public sector enterprises about the drive to promote procurement of common use goods and services from women entrepreneurs. Unlike other initiatives arguably operating to the same end, Womaniya is expressly striving to spur hyper-local economic opportunities for women entrepreneurs and address goals and objectives under the United Nations Sustainable Development Goal 5, which is to "Achieve gender equality and empower all women and girls". Beforehand, in 2008, the Government of India introduced a new credit-linked subsidy programme entitled the "Prime Minister's Employment Generation Programme", seeking to generate employment opportunities through the establishment of micro enterprises in rural and urban

areas. Under this programme, women entrepreneurs are entitled to a 25 per cent and 35 per cent rate of subsidy (as a percentage of the total project cost) for projects set up in urban and rural areas respectively.<sup>46</sup>

### Private sector

There are examples in the private sector of targeted initiatives aimed at supporting women entrepreneurs and women-owned businesses in the hope of expanding procurement from such businesses in the long run. In parallel to establishing procurement quotas to buy from women-owned businesses (as discussed above), Procter & Gamble in **India** has set a procurement quota from women-owned businesses and has partnered with WEConnect India, an NGO that connects women-owned businesses to qualified buyers, to develop capability among women entrepreneurs through training and supplier workshops.<sup>47</sup> Similarly, Walmart India has launched the Women's Entrepreneurship Development Program which provides capacity-building training, mentoring and technical support customized to the needs of the candidates' businesses.<sup>48</sup> Likewise in **Jordan**, there has been an increased interest in gender-responsive frameworks, such as the UN Women's Empowerment Principles (WEPs), among private sector companies (more than 60 companies joined the WEPs community and committed to its implementation in 2021).<sup>49</sup> For example, Amam Ventures, a WEPs signatory company, which is an impact investment fund, has developed a programme to promote diversity on corporate boards to support the next generation of women board members in Jordan and have launched a group mentorship and business development programme that is specifically designed to build the capacity of women who lead micro and small businesses.<sup>50</sup>

There are also examples of programmes established with close cooperation between the public and private sectors.

For example, **Egypt** and **Lebanon** are relying on close collaboration between governments and national banks. In **Egypt**, the Egyptian Micro, Small and Medium

44 The Jordan Commission for Women, "National Strategy for Women in Jordan 2020–2025" (2021). The strategy can be accessed via the following [link](#).

45 The e-marketplace can be accessed [here](#).

46 More details on the subsidy programme can be found [here](#).

47 More information on P&G's collaboration with WEConnect International and WEConnect India can be found [here](#).

48 More information on the Women's Entrepreneurship Development Program (WEDP) can be found [here](#).

49 More information on the WEPs community in Jordan can be found [here](#). Click on Jordan in the drop-down menu.

50 More information can be found [here](#).

Enterprises Development Agency (**MSMEDA**) provides loans to SMEs with preferential interest rates. While this programme does not specifically target women, women have nonetheless benefited. According to MSMEDA statistics, total loans up to EGP 9.1 billion went to finance women’s SMEs between July 2014 and late 2020.<sup>51</sup> Further, the Commercial International Bank (**CIB**), Egypt’s leading private sector bank, designed a special lending offering tailored for women-owned businesses to support women entrepreneurs, the first of its kind in Egypt. Called “Women in Business”, it is a short-term overdraft facility which finances working investment needs (e.g. for suppliers, overhead, salaries, taxes and customs) in addition to issuing partially secured bid, performance and advance payment letters of guarantee to support companies’ operations and the tendering activities of existing and non-existing CIB customers.<sup>52</sup>

In **Lebanon**, there have also been endeavours to promote women’s entrepreneurship. The National Commission for Lebanese Women refers to the Central Bank’s Basic Decision of 5 May 2011, which allowed the extension of micro-credits to women entrepreneurs. This policy is not linked to procurement but, by enabling women’s entrepreneurship, it may eventually support their efforts to obtain contracts.<sup>53</sup>

Movement is not only occurring in the banking sector. **Costa Rica**, for example, is in large part relying on its private sector to encourage gender-responsive procurement programmes. Within Costa Rica’s private sector, the Asociación Empresarial para el Desarrollo (Business Alliance for Development) (**AED**), has various initiatives to promote gender equality.<sup>54</sup> The AED, a non-profit organization, is made up of more than 110 companies that work in coordination with civil society and the state through public–private alliances under a collective impact approach. Among the AED’s initiatives for promotion of gender equality are:

- The Women’s Business Alliance Programme: This is a fund for small companies led by women (represented by women, and at least 50 per cent of the share capital is held by women).
- Training and support: The AED provides training workshops on business development and personalized support sessions for women entrepreneurs to define an investment proposal from the seed capital funds that will have an impact on the growth of their business.
- Promotion of partnerships between companies led by women beneficiaries of the Women’s Business Alliance Programme with partner companies of the AED.

### Canada: The Women Entrepreneurship Strategy

As part of the Government of Canada’s Women Entrepreneurship Strategy (**WES**) programme, the Office of Small and Medium Enterprises within Public Services and Procurement Canada aims to increase the participation of businesses led by Canadians from underrepresented groups, including women, in the government marketplace.<sup>55</sup>

Further to the WES programme, the following have been established:

- The Women Entrepreneurship Loan Fund: This will provide loans of up to CAD 50,000 to women business owners and entrepreneurs so they can start up, scale up and access new markets.
- The WES Ecosystem Fund: This fund helps to address gaps and build capacity in the entrepreneurship ecosystem for women. CAD 15 million dollars was allocated to fund national or multiregional projects, while CAD 70 million was allocated to fund projects delivered in only one of the regions of Western Canada, Northern Ontario, Southern Ontario, Quebec, Atlantic Canada and Northern Canada.

WES’s more than CAD 6 billion investment aims to increase the access of women-owned businesses to the financing, talent, networks and expertise they need to start up, scale up and access new markets.

51 More information on the financial support provided by the MSMEDA in Egypt can be found [here](#) and [here](#).

52 More information on the special lending programme in Egypt can be found [here](#).

53 See the National Commission for Lebanese Women website here for more information. <https://nclw.gov.lb/en/portfolio-category/economic-empowerment/>.

54 More information on the initiatives can be found on the Business Alliance for Development’s [website](#).

55 More information on the strategy can be found on the Government of Canada’s Women Entrepreneurship Strategy’s [website](#).



## f. Tax and other incentive-based programmes in support of companies with strong gender equality credentials and/or women entrepreneurs

Providing tax incentives to companies that adopt strong gender-responsive business practices is another important way that governments can promote gender equality and gender advancement in the marketplace or within specific sectors. In **Viet Nam**, for example, companies employing a mandated amount of women employees are entitled to tax incentives. Any production, construction or transportation company that employs between 10 and 100 women employees who account for more than 50 per cent of its total regular employees or that regularly employs over 100 women employees who account for more than 30 per cent of its total regular employees, is entitled to a reduction of payable corporate income tax equivalent to the actual additional expenses for women employees.<sup>56</sup> Similarly, governments may also make use of insurance-related incentives to promote gender-responsive business practices. In **Türkiye**, the Turkish Employment Agency incentivizes employers to employ women or disabled employees by covering the

insurance premiums to a certain level of the employers who satisfy the conditions required to fall under the scope of the incentive programme.<sup>57</sup> Financing subsidies may also be used in a similar fashion. Also in **Türkiye**, and within the scope of the Support for Cooperatives Programme, a number of subsidies have been established by the Ministry of Commerce.<sup>58</sup> In accordance with the Programme, funds for purchases of goods and services shall be provided to cooperatives where at least 90 per cent of the members are women. Financial support will be provided for the purchase of investment goods as fixtures for elderly and disabled care centres, child clubs, nurseries and day-care centres, which are operated by cooperatives with at least 90 per cent women members. Finally, the Turkish Ministry of Trade is developing a draft law that would introduce new provisions for e-commerce platforms. It is expected to include incentives for women cooperatives by allowing them to carry out business operations with lower commission fees on e-commerce platforms.

## g. Development of measures, whether incentive-based or principle-based, promoting gender advancement in the context of public planning, budgeting and procurement

Gender mainstreaming within the specific context of public planning and budgeting is another approach being embraced by public policymakers around the world which often directly or indirectly also implicates public procurement. The objective is setting procedural and/or substantive standards which ensure that gender advancement and gender equality norms are “baked in” to the planning and policy process, such that they are actively taken into consideration before, during and after public planning and budgeting cycles.

For example, in Indonesia, the Ministry of National Development Planning, Ministry of Finance, Ministry of Home Affairs and Ministry of Women’s Empowerment

and Child Protection have developed a set of guidelines for Gender Responsive Planning and Budgeting for Local Governments.<sup>59</sup> According to the guidelines, Gender Responsive Planning is carried out to ensure justice and equality for women and men in the aspects of access, participation, control and development benefits in the local government. This planning is made by considering the aspirations, needs, problems and experiences of women and men, both in the process of formulating it and in implementing activities. Gender Responsive Planning is expected to produce a Gender Responsive Budget, under which allocation policies and budget lines are drawn up to accommodate the different needs of women and men.<sup>60</sup> Most recently, the updated

56 Circular No. 78/2014/TT-BTC guiding the implementation of the government’s Decree No. 218/2013/ND-CP of 26 December 2013 detailing and guiding the implementation of the law on CIT (2014), Vietnam.

57 Incentive for Women, Youth and People holding Professional Competence Certificate (2018), Türkiye.

58 Regulation on Support for Cooperatives published on the Official Gazette on 30.07.2013, Support for Cooperatives Application and Evaluation Guideline and Support for Cooperatives Programme Guideline drafted specifically for Cooperatives published by the Ministry of Commerce, Türkiye.

59 Guidelines for Gender Responsive Planning and Budgeting for Local Governments concerning the National Strategy for the Acceleration of Gender Mainstreaming (PUG) through Gender Responsive Planning and Budgeting (PPRG) made by the Ministry of National Development Planning, Ministry of Finance, Ministry of Home Affairs and Ministry of Women’s Empowerment and Child Protection, Indonesia.

60 In addition, in the context of regional planning, Gender Responsive Planning is reflected in the Regional Medium Term Development Plan, Local Government Work Plan, Regional Work Unit Strategic Plan and Regional Work Unit Work Plan documents.

Government Work Plan for 2022 envisions policy aimed at strengthening the institutionalization of Gender Mainstreaming and the implementation of Gender Responsive Planning and Budgeting in ministries or agencies and local governments.<sup>61</sup>

In the context of development planning, in **the Philippines**, provisions have been enacted with the intention to recognize the role of women in nation building and recognize their equality alongside men.<sup>62</sup> One of the major policies is the allocation of a “substantial portion of official development assistance funds received from foreign governments and multilateral agencies and organizations” for support programmes and activities for women.<sup>63</sup> Additionally, government agencies are likewise mandated to guarantee that “women benefit equally and participate directly in the development programmes and projects of [the said agency]” toward “the full participation and involvement of women in the development process.”<sup>64</sup> Separately, the “Magna Carta of Women” mandates that government agencies must allocate between 5 per cent and 30 per cent of funds received from foreign governments and multilateral agencies to gender-responsive programmes and projects.<sup>65</sup> The Magna Carta also establishes an awards system which provides recognition to national government agencies which successfully observe and implement gender mainstreaming in their administrative processes.<sup>66</sup>

In **Europe**, the European Charter for Equality of Women and Men in Local Life (“**The Charter**”) provides an excellent example of how gender mainstreaming strategies at the level of municipal government might promote GRP.<sup>67</sup> The Charter outlines principles and obligations for municipalities in order to ensure gender equality in areas including but not limited to politics, health, education, social care and services, housing, and public procurement and contracts. In particular, according to Article 12 of the Charter, signatory municipalities are responsible for promoting equality among women and men while carrying out their tasks and obligations in relation to public procurement. In addition, it is also obligatory for municipalities to ensure that subcontractors who become parties to municipal procurement contracts commit to the same responsibilities—to promote equality—as the municipality would have in case it was providing the relevant service directly.

In line with the Charter, certain municipalities in **Türkiye**, for example, have adopted and published decisions to guide companies regarding women’s empowerment and gender equality in public procurements. As an example, the Istanbul Metropolitan Municipality has published the 2021–2024 Action Plan on the basis of the Charter.<sup>68</sup> The Action Plan specifically sets forth several strategies to empower women through public procurement, such as providing incentives and training programmes for women entrepreneurs in order to encourage them to participate in public tenders.

#### **h. Governance, transparency, disclosure, reporting and/or monitoring regimes related to gender equality metrics (in particular for publicly listed companies), e.g. in the context of ESG and corporate sustainability regulation**

Increased regulatory focus in recent years on non-financial and corporate social responsibility reporting has also meant that publicly listed companies especially find themselves under an obligation to report on gender equality to some degree. Such data, if sufficiently standardized and comparable, can be used within the context of both public and private sector procurement. For example, where there are available

and comparable data from a variety of bidders in relation to, for example, gender balance, the gender pay gap and women in leadership positions, such data can be incorporated into bidding evaluation frameworks and be used, for instance, in tie-breaker situations. The Board of Directors of the **Egyptian** Financial Regulatory Authority issued new resolutions in mid-2021. The amendments require that companies listed and regulated by the

61 Attachment of Presidential Reg 115/2021 (2021), Indonesia.

62 In particular, through the Women in Development and National Building Act (1992), the Philippines.

63 Ibid.

64 Ibid.

65 Republic Act 9710 IRR (The Magna Carta of Women) (2009), the Philippines.

66 Ibid. (as revised in 2018).

67 The European Charter for Women and Men in Local Life (2006), Europe.

68 Istanbul Metropolitan Municipality Local Equality Action Plan 2021–2024 can be accessed [here](#).

Egyptian Stock Exchange (EGX) raise the percentage of women representation on their boards to 25 per cent or have at least two women as members of the board.<sup>69</sup> In **India**, the board of directors of companies listed on Indian stock exchanges are required to have at least one woman director, and board of directors of the top 1,000 listed entities<sup>70</sup> are required to have at least one 'independent' woman director.<sup>71</sup> Further, the Companies (Appointment and Qualification of Directors) Rules 2014 require every company listed on a stock exchange or public companies with qualifying paid-up share capital or turnover to appoint at least one woman director.<sup>72</sup>

In **Chile**, the Financial Market Commission imposes an obligation on issuers of publicly offered securities to maintain annual reports.<sup>73</sup> The obligation has developed over the years to include diffusion of corporate governance information of open stock companies, and disclosure of ESG (including diversity and pay gap) data. As the obligation has developed, the ESG disclosure has developed to include diversity in the composition of the board, administration and the organization as a whole, including the number of people per gender in each category, as well as information regarding the gender pay gap (by means of the proportion that the average net base wage of women executives and workers represent of their counterparts who are men, per position, responsibility and activity performed).<sup>74</sup> Moreover, on December 2021, the Financial Market Commission issued General Rule No. 461, and this with the information required in the Social Responsibility and Sustainable Development Report under the previous regulation (General Rule No. 385 of 2015), was broadened to include indicators related to equality policies, postnatal care and work harassment policies, among other relevant issues. In **China**, Article 35 of the 2021 Draft Amendments to the Law of the People's Republic of China (PRC) on the Protection of Rights and Interests

of Women seeking for public opinions adds a new requirement that companies in their annual reports will have to provide information on the recruitment and employment of women, the gender ratio of employees and the gender ratio of management personnel.<sup>75</sup> Similarly, in **Viet Nam**, private companies are required to engage in reporting on corporate gender equality and provide such information upon request of competent public authorities.<sup>76</sup>

Even where rules do not specifically require companies to report gender equality data in detail, there is often still scope for such reporting on a voluntary basis within the general framework of mandatory corporate ESG reporting and disclosures. For example, in **the EU**, the EU Non-Financial Reporting Directive 2014 (to be replaced by the Corporate Sustainability Reporting Directive in 2022) requires certain large enterprises to disclose their diversity policies in relation to the administrative, management and supervisory bodies with regard to aspects such as, for instance, age, gender and educational and professional backgrounds.<sup>77</sup> Similarly, in **India**, the Securities and Exchange Board of India requires that each of the top 1,000 listed entities must include in their Annual Report a Business Responsibility and Sustainability Report (BRSR) describing the initiatives taken by them from an ESG perspective.<sup>78</sup> The BRSR seeks disclosures from listed entities on their performance against the principles of the National Guidelines on Responsible Business Conduct 2018. The reporting format of the BRSR requires businesses to provide details in relation to the participation, inclusion and representation of women and requires disclosure of the gender ratio of the board of directors, key management personnel, employees and other workers employed by a business.<sup>79</sup> In **Georgia**, laws mandate the preparation and presentation of management reports by companies to their relevant

69 More information on rules for listing securities to raise the percentage of women's representation on boards of directors of companies whose securities are listed on the Egyptian Stock Exchange can be found [here](#).

70 Determined on the basis of market capitalization, as at the end of the immediate previous financial year.

71 The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015, India.

72 Companies (Appointment and Qualification of Directors) Rules 2014, Rule 3, India.

73 General Rule No. 30 of the Financial Market Commission, Chile.

74 General Rule No. 385 of the Financial Market Commission (2015) Chile.

75 Law of the PRC on the Protection of Rights and Interests of Women seeking for public opinions ("2021 Draft Amendment") circulated on 24 December 2021 by the Standing Committee of the National People's Congress of the PRC, the People's Republic of China.

76 Article 32 of Law on Gender Equality 2006, Vietnam.

77 Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (Text with EEA relevance) (2014), EU.

78 Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations (2015), India.

79 SEBI Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 and dated 10 May 2021, India.

authorities.<sup>80</sup> Each management report includes a corporate governance report and a non-financial statement. The corporate governance report must include a review of the diversity policy (on factors including age, gender and qualifications) applied to the entity's management body and supervisory board, as well as the purpose of the policy, applied methods and the results achieved within the relevant period.

The second element of the management report, the non-financial statement, must include at least the basic information related to environmental, social, employment, human rights and corruption issues within the relevant entity.<sup>81</sup> The **Philippines**<sup>82</sup>, **South Africa**<sup>83</sup>, **Türkiye**<sup>84</sup> and **Uzbekistan**<sup>85</sup> have adopted very similar measures regarding companies' reporting requirements.

### United Arab Emirates: Regulating to increase women on boards

In 2021, the Securities and Commodities Authority (**SCA**) of the United Arab Emirates (UAE) made it mandatory for Public Joint Stock Companies listed on either the Abu Dhabi Securities Exchange (**ADX**) or the Dubai Finance Market (**DFM**) to appoint at least one woman board member. In accordance with the decision, companies are required to disclose the representation of their board in their annual governance report. The decision was made as part of the Authority's efforts to empower Emirati women and encourage them to play a greater role on the boards of listed companies. Gender balance has been described by the UAE government as a "top national priority", as the country aims to enhance the participation of women in society and the economy.<sup>86</sup>

Ultimately, where either public or private buyers would like to use their leverage to encourage greater transparency within their supply chains (i.e. in relation to gender equality and gender advancement policies

and practices among potential corporate suppliers), many countries have pre-existing non-financial reporting frameworks which could facilitate or provide a benchmark for such corporate reporting.

80 The Law of Georgia on Accounting, Reporting and Audit (2016), Georgia.

81 More recently, the Georgian Corporate Governance Code for the Issuers of Publicly Held Securities came into force (9 December 2021), which stipulates that members of Supervisory Boards must be elected in a manner to ensure the balance of diversity of opinions. This implies the composition of the Board with people of different genders, skills, qualifications and experiences, who have enough time, resources, proper qualifications, professional experience and appropriate competence to fulfil their functions and who will act in a good faith (Article 6(5)).

82 The Code of Corporate Governance for Publicly Listed Companies, Memorandum Circular No. 19 (2019), the Philippines.

83 The King IV Report on Corporate Governance South Africa (2016), South Africa.

84 Capital Market Law 6362 (2014), Türkiye. The law sets forth an obligation of compliance with corporate governance principles whose further details shall be determined in accordance with its secondary legislations.

85 The Law of the Republic of Uzbekistan "On official statistics" No. 3PY – 707 (2021). The Resolution registered by the Ministry of Justice under No. 3334 (2021), Uzbekistan.

86 The SCA Board Chairman's Decision No. 3 of 2020 approving the Governance Guide for Public Joint-Stock Companies (2020), UAE.

# VI. INTERNATIONAL AND NATIONAL NORMS RELEVANT TO GRP REGIMES

The wide range of regulatory measures and policies discussed in Part V above are all examples of ways in which public and private buyers can mainstream gender equality and women's advancement into their procurement practices. This section of the report will identify and analyse some of the legal bases that can be relied on by legislators and policymakers who are considering or want to advocate for the introduction of new GRP measures.

One important consideration for policymakers and regulators is the extent to which preferential treatment (i.e. of women) is permissible in their jurisdiction under the prevailing legal framework. In some jurisdictions, the relevant legal framework provides a clear legal basis for the introduction of such measures. For private buyers, another important consideration is the extent to which private procurement is legally regulated. In many jurisdictions, there is limited or no regulatory framework or legislation stipulating specific rules for private companies for procurement. Private companies are therefore free to establish their own rules when making procurement decisions, provided of course that they do not fall afoul of other laws (e.g. in relation to non-discrimination).

In a policy and legislative environment where procurement is highly regulated and gender-responsive procurement is a recognized objective consistent with relevant equality and non-discrimination laws, companies will have significant latitude to promote women's advancement through their procurement practices, without fear of violating anti-competition or anti-discriminatory norms. This could involve, for example, establishing rules which prohibit granting procurement contracts to companies that cannot prove

their commitment to gender equality (i.e. developing exclusion criteria, as discussed above).

However, in jurisdictions where procurement is lightly regulated, such as **China, Egypt, Indonesia, Lebanon** and **Saudi Arabia**, where contracting authorities and private procurement departments are provided with a great amount of discretion in shaping the terms of procurement contracts, it may be more challenging to proactively implement GRP measures. A lot will depend on the broader legislative context concerning gender equality and non-discrimination. In Thailand, for example, private companies have free discretion to shape their own terms of procurement contracts, provided that the contracts do not violate the non-discriminatory clauses as stipulated in the Thai Constitution<sup>87</sup>, Gender Equality Act<sup>88</sup> or Labour Protection Act<sup>89</sup>.

While discretion in shaping the terms of procurement contracts can, in theory, allow for greater preferential treatment of women, in practice, it makes it harder to regulate or measure how gender-responsive the procurement process is. Although some countries have guidelines and policy directives regarding women's advancement, there are few practical requirements or benchmarks to be met. Reliance on voluntary corporate

87 The Constitution of Thailand B.E. 2550 (2007), Thailand.

88 Gender Equality Act (2015), Thailand.

89 Labour Protection Act (1998), Thailand.

action in a low regulation environment may not be conducive to fast progress in relation to gender-responsive procurement. In the worst case, absence of relevant regulation and coherent policy potentially leaves women vulnerable to being overlooked and diminishes the opportunity for them to advance their economic empowerment. Clear and targeted provisions will also be easier for public and private buyers to comply with and will provide much greater legal certainty.

Despite the lack of regulation of private procurement and the significant discretion in shaping the terms of procurement contracts in some jurisdictions, in most jurisdictions explored for this report, public procurement and procurement contracts are strictly governed by the principles of equal treatment, non-discrimination, transparency and fair competition. In accordance with these principles, bidders and tenderers should be treated in an equal and non-discriminatory manner and free

competition should be guaranteed. This indicates that a contract ought to be awarded to the tenderer who has submitted the lowest offer or, where relevant, to the tenderer who has submitted the most economically advantageous offer. Moreover, the award of the contract should occur in a transparent fashion. For example, a contract announcement and/or a set of specifications should be published for each public procurement contract. This should set out the selection criteria and the terms and conditions of performance. These principles would appear to considerably limit the extent to which measures promoting gender equality and women's advancement may be introduced in the context of procurement.

With these key considerations in mind, it is important to explore the legal grounds under both national and international legal frameworks that local policymakers and legislators may use to advocate for or introduce legal, regulatory and policy measures promoting GRP.

### a. International level: legal bases for introducing GRP measures

As noted above, the fundamental principles of equal treatment and non-discrimination are explicitly referred to in many international human rights instruments and national legislative provisions. While any form of preferential treatment inherently goes against these fundamental principles, international human rights law is clear that preferential treatment is permitted under strictly defined conditions related to proportionality, transparency and due diligence. This is reflected in relevant international human rights instruments, including the International Convention on the Elimination of Racial Discrimination<sup>90</sup>, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>91</sup> and the Convention on the Rights of Persons with Disabilities<sup>92</sup>.

When speaking of preferential treatment in the international legal context, the terms “special measures” or “temporary special measures” are used. The Committee on the Elimination of Racial Discrimination has articulated the most complete definition of the meaning of special measures as “the full span of legislative, executive, administrative, budgetary and regulatory instruments, at every level in the State apparatus, as well as plans, policies, programmes and preferential regimes in areas such as employment,

housing, education, culture and participation in public life of disfavoured groups, devised and implemented on the basis of such instruments”.<sup>93</sup>

In General Recommendation number 32, the Committee further sets out a list of conditions for the adoption and implementation of special measures. The Recommendation provides that special measures should be appropriate to the situation to be remedied, be legitimate, necessary in a democratic society, respect the principle of fairness and proportionality, and be temporary. These criteria are an important reference for states introducing or considering the introduction of gender-responsive procurement laws and policies. They provide a clear legal justification against which such measures can be assessed and therefore act as a useful framework for legislators.

CEDAW imposes a legal obligation on State Parties to respect, protect, promote and fulfil the right to non-discrimination for women, and to ensure the development and advancement of women in order to improve their position to one of both de jure and de facto equality. This legal obligation includes a responsibility to address prevailing gender relations and the persistence of gender-based stereotypes

90 International Convention on the Elimination of Racial Discrimination (1969).

91 Convention on the Elimination of All Forms of Discrimination Against Women (1979).

92 Convention on the Rights of Persons with Disabilities (2008).

93 Committee on the Elimination of Racial Discrimination, General Recommendation No. 32 (2009).

that affect women in law, as well as in legal and societal structures and institutions. As confirmed by the Committee on the Elimination of Discrimination Against Women, the application of temporary special measures in accordance with the CEDAW is part of a necessary strategy by which State Parties are able to realize de facto or substantive equality for women in the enjoyment of their human rights and fundamental freedoms, rather than as an exception to the norms of non-discrimination and equality.<sup>94</sup> As such, international

law offers a clear legal basis for the introduction of regulatory and policy measures seeking to promote GRP, in line with the fundamental principles of equal treatment and non-discrimination. This is also reflected in Article 4 of the CEDAW.<sup>95</sup> The purpose of article 4(1) is to accelerate the improvement of the position of women to achieve their de facto or substantive equality with men and to address the structural, social and cultural changes necessary to correct past and current forms of effective discrimination against women.

### Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Article 4 of the CEDAW provides that temporary special measures aimed at accelerating de facto equality may be adopted. The provision states:

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 4 of the CEDAW is explicit in its assertion that special measures aimed to advance women's interests will not be regarded as discriminatory in the context of international law. However, it makes clear that this refers to "temporary" special measures that pursue a clearly defined objective or criteria. Therefore, once this objective has been met, such measures will no longer be considered a valid exception to the principle of equal treatment and non-discrimination. The Committee on the Elimination of Racial Discrimination has also stressed that special

measures must be temporary in nature, clearly stating that there is a need for a continuous follow-up system on the application and results of such measures. In the gender procurement sphere, it may be possible to evaluate the success of such measures against a certain proportion of contracts granted to women-owned businesses and the percentage of women in employment. The condition that such measures be "temporary" distinguishes them from permanent rights enjoyed by specific categories of persons or communities, such as minority groups.

## b. National level: legal bases for introducing GRP measures

At the national level, a key consideration for introducing gender-responsive procurement is the extent to which preferential treatment is permissible in each jurisdiction. Several jurisdictions have demonstrated a move towards a structured framework in domestic legislation with the explicit goal of promoting economic and social objectives through their procurement laws. By including specific legal regimes and provisions that address the role of (gender) equality or women's participation in

their legal procurement frameworks, these jurisdictions provide a clear legal basis for preferential treatment, including in the form of GRP measures.

In **Türkiye**, the Women Empowerment Strategy and Action Plan (2018–2023) (**WESAP**) includes objectives for developing labour legislation which would enhance the participation of women in public procurement by introducing new provisions that explicitly allow positive discrimination in favour of women. Another example of

94 Committee on the Elimination of Racial Discrimination, General Recommendation No. 32 (2009).

95 Convention on the Elimination of Discrimination Against Women (1979).

a jurisdiction whose legal framework provides a legal basis to introduce GRP measures is India. In 2018, India introduced a regulatory measure setting out quotas for public procurement<sup>96</sup> for Micro and Small Enterprises<sup>97</sup>. Out of the total annual procurement by the Government of India, 3 per cent of the 25 per cent quota reserved for procurement from micro and small businesses has been reserved for procurement from women-owned enterprises. Another example is **Indonesia** where the Draft Presidential Regulation on the National Strategy for the Acceleration of the Implementation of Gender

Mainstreaming aims to develop a specific legal basis for legislation regulating the implementation of Gender Mainstreaming at the central, regional and village levels as well as to accelerate its implementation in order to reduce gender disparities.<sup>98</sup>

A New Lebanese Procurement Law (Law No. 244/2021, the “Procurement Law”) was enacted which promotes sustainable procurement in general.<sup>99</sup> The explanatory note to the draft law referred to women’s participation in the economy as a key to balanced development.

### Lebanon

Article 15 of the Procurement Law provides that:

“Where possible, procuring entities shall adopt sustainable public procurement to direct the procurement power of the State towards sustainable goods and services with a view to minimizing the environmental impact and achieving the economic and social objectives set forth in international agreements and in accordance with national priorities”.

The explanatory note in the Draft Law specifically referred to the “support of women’s economic participation” as an example of balanced economic development.

South Africa has specific affirmative action measures in place to advance the status of women and other minorities in the procurement process.<sup>100</sup>

### South Africa

The Preferential Procurement Policy Framework Act 2000 (“**PPPFA**”) was specifically enacted to prevent unfair discrimination and promote equality within the procurement process. It has put in place a points-based procurement system, which favours those who have a higher BEE rating when awarding tenders.

The Broad-based Black Economic Empowerment Act 2003 (“**BEE Act**”) seeks to promote the advancement of minority groups, in particular black women, by ensuring that state procurement is used more effectively to advance the socioeconomic status of women. Given that unemployment rates are highest among women, disabled people and the younger generations, the BEE Act promotes the inclusion of these groups by offering investment and preferential procurement to businesses run by these groups. While this legislation is not mandatory and does not impose direct penalties for non-compliance, companies doing business with the State and public entities are measured in accordance with the number of BEE “points” they have been allocated. Companies with a better “BEE rating” will have a better prospect of success for securing State tenders. The South African government has gone even further in certain sectors (such as mining), where it will only grant licences to entities that satisfy the relevant BEE requirements.

96 Public Procurement Policy for Micro and Small Enterprises (MSEs) Amendment Order (2018), India.

97 Note: Enterprises with investment in plant machinery or equipment valued at no more than INR 10 million and turnover of up to INR 50 million are classified as “micro”; while enterprises with investment not more than INR 100 million and turnover up to INR 500 million are classified as “small” by the Ministry of Micro, Small and Medium Enterprises, Government of India.

98 Attachment of Presidential Reg. 115/2021 (2021), Indonesia.

99 Law No. 244/2021. An unofficial English translation is [here](#).

100 Preferential Procurement Policy Framework Act (2000), South Africa; Broad-based Black Economic Empowerment Act (2003), South Africa.



In many jurisdictions, there have also been efforts to simplify and streamline procurement laws in recent years. These efforts have been identified in several jurisdictions, such as **Costa Rica** and **Uganda**, as an opportunity to realign such laws with broader initiatives which protect vulnerable social groups, including women.

On the contrary, a number of jurisdictions have procurement laws which explicitly prohibit preferential criteria or practices that pose a threat to fair competition in the procurement process. An example of a jurisdiction which explicitly sets out an obligation to promote the principle of equality, non-discrimination and fair opportunity is **Egypt**. This obligation can be interpreted as prohibiting GRP measures, with any type of preferential treatment on the basis of gender-related criteria constituting a violation of such principles.

Procurement laws in **Uzbekistan** go even further, specifically prohibiting any selection criteria that would go against the principle of “competitiveness and objectivity” in the Law on Public Procurement<sup>101</sup> by, for example, providing preferential treatment and benefits to certain candidates to the detriment

of others and/or putting in place non-competitive methods of public procurement. Similarly, in the **Philippines**, various laws and government issuances explicitly prohibit gender-discriminatory criteria in the awarding of procurement contracts. In reality, it is likely that gender-responsive procurement practices would be justified by reason of rectifying systemic imbalances and unfair disadvantages experienced by women in the industry. Use of gender-related criteria is clearly an effort to rebalance gender equality, rather than threaten it. This has been recognized in **India**, for example, where women are specifically excluded from anti-discriminatory laws. Similarly, in **Georgia**, despite there being very prescriptive legislation in place to ensure a “fair and non-discriminatory” process when selecting bidders for a procurement contract, it is unlikely that this would apply to gender-responsive practices. This is clear from the Law on the Elimination of All Forms of Discrimination which stipulates that temporary special measures intended to accelerate de facto equality, especially in gender, pregnancy and maternity issues, and also with respect to persons with limited capabilities, shall not be considered discrimination.<sup>102</sup>

### Saudi Arabia

In Saudi Arabia, Article 4 of the new Government Tenders and Procurement Law (**GTPL**) provides that “all persons wishing to deal with the Government Entity and fulfilling the conditions which qualify them for such a dealing shall be given equal opportunities and shall be treated on equal footing”. This implies that preferential treatment to women when awarding procurement contracts would be implicitly prohibited in Saudi Arabia, as a violation of the equal opportunity principles under Article 4.

Despite Article 4, the Saudi government has issued gender-responsive policies in the past to create equal opportunities for women. For example, the Ministry of Labour and Social Development issued Resolution 5/12/1440 which sets out a list of jobs in the retail sector which should be available only to Saudi women. This form of positive discrimination was not held to be in violation of Saudi labour law. Conversely, on 22 February 2021, the Ministry of Human Resource and Social Development (**MHRSD**) responded to a company’s published advertisement “jobs for men only” as a violation of Saudi labour law and reiterated that there should be no discrimination based on gender during employment or the recruitment process. It is therefore clear that the government’s interpretation of equal opportunity under Saudi labour law does allow for exceptions for women. Accordingly, “equal opportunity” under the GTPL may be interpreted in a similar way to allow positive discrimination in the procurement process.<sup>103</sup>

101 Law of the Republic of Uzbekistan “On public procurement” (2021), Uzbekistan.

102 Law on the Elimination of All Forms of Discrimination (2014), Georgia.

103 Government Tenders and Procurement Law (2019), Saudi Arabia.

Despite the fact that women's advancement is widely recognized as an important and socially responsible goal, in countries that explicitly and implicitly prohibit gender-related criteria, companies may rightly be wary of engaging with such practices, for fear of them being rendered void or anti-competitive under the law.

The domestic legal framework in general and procurement laws in particular often do not include explicit reference to GRP, gender equality or the use of gender-related criteria in the procurement context. Nonetheless, these legal frameworks still offer some scope for the introduction of GRP measures on the basis of other domestic laws, such as constitutional principles, relevant labour laws or laws concerning gender equality and women's advancement.

Constitutional principles that promote the rights of women and other minority groups can help shape and justify GRP measures. However, constitutional principles can also hinder or prevent the introduction of preferential treatment or GRP measures. Fundamental principles, such as non-discrimination and equal treatment, can be interpreted to constitute explicit prohibitions of gender discrimination. Read in isolation, these principles prohibit preferential treatment as a measure which goes against the equal treatment of men and women. While European equality legislation recognizes that there are appropriate exceptions to the principles of equality in relation to certain disadvantaged groups (including women), this is not the case in many other jurisdictions.

### The Philippines

In the Philippines, Republic Act No. 386 provides that contracting parties may agree such terms and conditions as they deem appropriate, provided they are not contrary to law or public policy. Since one of the state policies under the 1987 Constitution is that the State shall ensure the fundamental equality before the law of women and men, it follows that a contractual term which violates the gender equality policy would be considered void under the Act.<sup>104</sup>

There may be, in such jurisdictions, a need to introduce suitable exceptions to relevant constitutional provisions in order to provide for legal certainty with respect to GRP. Moreover, such legislation and policy may also reduce the risk that women are systematically overlooked and disadvantaged within the procurement context. Indeed, it could be argued, as demonstrated by the actions of some policymakers, that preferential treatment of women is justified in order to achieve de facto equality.

In addition to constitutional principles, in some jurisdictions, domestic labour laws may provide a legal basis to introduce GRP measures. It has been widely recognized globally that women suffer an occupational and economic disadvantage in the workforce in comparison to men. While many countries already have initiatives in place which promote women's equal rights to employment and pay, there are also countries, such as **Viet Nam**, which expressly prohibit gender discrimination (including positive discrimination) in any form.

<sup>104</sup> Republic Act No. 386, An Act to Ordain and Institute the Civil Code of the Philippines (1949); Constitution of the Republic of the Philippines (1987), the Philippines.

In contrast, countries such as **Türkiye** do permit positive discrimination under their labour law:

### Türkiye

Positive discrimination is permitted under Turkish Labour Law **TLL** for women and people with disabilities. The TLL regulates general business relationships and principles formed between employers and employees in Türkiye, including in regard to gender equality. TLL places several obligations on employers, which also extend to those who employ staff in the procurement industry. Where mandatory provisions are not fulfilled, for example granting severance pay to employees, sanctions and administrative fines will apply.<sup>105</sup>

A third legal basis may lie in domestic laws on gender equality and women's advancement. For example, in the **Philippines**, the Magna Carta of Women<sup>106</sup>, a comprehensive women's human rights law, specifies that government agencies must allocate 5 to 30 per cent of their overseas development assistance received from foreign governments and multilateral organizations to projects that support and promote gender mainstreaming and gender-responsive programmes. Other jurisdictions have similar but less prescriptive laws in place that are aimed at advancing gender equality. **Indonesia's** laws, for example, instruct the State Minister for Women's Empowerment to provide technical assistance to government agencies and institutions at the central and regional levels in the implementation of gender equality and report back the results of such implementation to the president.<sup>107</sup>

In **China**, the 2021 Draft Amendment of the Law of the PRC on the Protection of Rights and Interests of Women seeking for public opinions contains a new provision that allows the government to take provisional measures and provide preferential treatment to women on a provisional basis in order to achieve gender equality.<sup>108</sup>

Overall, very few jurisdictions have introduced systematic and legally binding requirements on public or private buyers to implement gender-sensitive procurement measures. However, there is increasing pressure on companies, in particular, to operate in a more socially responsible and sustainable manner. Where this is linked to gender equality and the promotion of women, either in international law or, in some cases, in national law, a greater focus on gender-responsive procurement can be expected.

<sup>105</sup> Turkish Labour Act No. 4857 (2006), Türkiye.

<sup>106</sup> Republic Act 9710 (Magna Carta of Women, 2009), the Philippines.

<sup>107</sup> Presidential Instructions on Gender Mainstreaming (INPRES No. 9/2000) (2000), Indonesia.

<sup>108</sup> Law of the PRC on the Protection of Rights and Interests of Women seeking for public opinions ("2021 Draft Amendment") circulated on 24 December 2021 by the Standing Committee of the National People's Congress of the PRC, the People's Republic of China.

# VII. CONCLUSION AND RECOMMENDATIONS

There are multiple and diverse strategies which governments are currently using to incorporate gender equality considerations into procurement systems, in addition to the international frameworks that support gender-responsive procurement practices. These include exclusion grounds, selection and award criteria, tie-breaker provisions, contract performance conditions, quotas, certifications, evaluation programmes, financing and grant-making, tax incentives, standard setting, and reporting and disclosure regimes.

Most countries have not started comprehensive reforms of their procurement systems for the purpose of promoting gender equality. However, several countries are well positioned to practise and scale up gender-responsive procurement. The following recommendations apply to countries regardless of where they are in this process.

**Reduce the gender gap in access to procurement through measures that specifically aim to increase sourcing from women's enterprises.** The strongest gender-responsive procurement measures introduce quotas and targets for procurement from women's enterprises. These measures are even stronger when gender equality is recognized at the constitutional level, which lends more robust support to temporary special measures such as affirmative procurement.

**Adopt measures to increase sourcing from women's enterprises as well as gender-responsive businesses that promote gender equality through their internal and external policies and practices.** The path to gender equality requires not only supporting businesses owned by women but also encouraging all businesses to embrace gender equality as a core objective. This will entail bolstering systems to identify women's enterprises and gender-responsive enterprises, establishing gender equality standards, putting in place mandatory reporting requirements, and promoting certification programmes. Capacity development for enterprises to improve gender-responsive policies and practices could accelerate the uptake of principles and standards.

**Invest in development for women's enterprises and gender-responsive businesses so they can improve their capacity to compete.** While institutionalizing changes in

government processes can reduce the barriers women's enterprises face, these enterprises also need to improve skills and capacity with support from government and other stakeholders. It is also important to develop platforms so that women's and gender-responsive enterprises can strengthen their networks and receive communication both about government tenders as well as other support services offered by governments and partners.

**Strengthen mandatory reporting of gender equality metrics to help identify and monitor the impact of business policies and practices on gender equality in order to make purchasing decisions.** Mandatory reporting requirements help ensure that gender equality remains a priority for companies and creates standardized data to help purchasing organizations and consumers make informed decisions. It is essential that a balanced set of indicators are included for mandatory reporting, because the gender-responsiveness of a company is not adequately defined by a single measure, such as the percentage of women on the corporate board. Ideally, the data and metrics reported would be available through a publicly accessible database.

**Engage diverse stakeholders as partners in developing and implementing gender-responsive procurement policies.** A wide variety of actors have a stake in gender-responsive procurement, including women entrepreneurs, workers and consumers, as well as civil society organizations and business associations. It is important to ensure diverse voices are represented in procurement processes, including advocacy, reform and implementation. Moreover, it is essential to ensure that minority businesses, including those facing various kinds of overlapping discrimination and disadvantage

on the grounds of race, ethnicity, income, age, disability, and sexual orientation and gender identity, among other factors, benefit from gender-responsive procurement by having their needs recognized and prioritized.

**Take a gender perspective not only with suppliers, but with what is being procured.** While gender-responsive budgeting is a widely known strategy that has been in practice for decades in some countries, connecting budgeting systems to procurement decisions is an underdeveloped field. Procurement impacts not only buyers, suppliers and workers, but also consumers who use the goods and services the government procures.

In addition to these recommendations, two lessons emerge from the report findings together with UN Women's experience in supporting gender-responsive procurement around the world.

**It is critical to institute mandatory requirements in addition to engagement with the private sector.** In many jurisdictions, laws that promote gender-responsive procurement are limited in scope, and there is only minimal regulation of business gender-responsiveness at the national level. A two-pronged approach is therefore required to have a scaleable impact. On the one hand, policy advocacy is key to encourage governments to embed gender equality into all types of national laws, strategies and plans that govern procurement and affect women's enterprises.

Efforts to improve mandatory regulation of gender equality standards in private enterprises should remain a priority. On the other hand, because of growing evidence that gender-responsive procurement can benefit businesses in financial terms, it is wise to encourage companies to voluntarily make progress in integrating gender equality considerations into their procurement systems.<sup>109</sup> Businesses participating as stakeholders in the gender-responsive procurement movement can create enterprise development opportunities for women's businesses even in the absence of strong regulation. It is also very important to engage with women's and workers' organizations in these efforts.

**For the public sector and the private sector to increase procurement for women's enterprises and gender-responsive enterprises, practical tools are necessary.** An efficient and comprehensive identification and monitoring platform should be developed to connect companies that meet gender equality standards with purchasing organizations. A central platform would be ideal so that different entities tracking and monitoring gender-responsive corporate behaviour could be coordinated, to have wider coverage. Screening tools for buyers to incorporate gender priorities into procurement specifications would also go a long way to standardizing and streamlining gender-responsive procurement.

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<sup>109</sup> UN Women, Procurement's strategic value (2022).

# VIII. ANNEX:

## PARTICIPATING COUNTRIES

Argentina	India	Philippines
Azerbaijan	Indonesia	Saudi Arabia
Bangladesh	Italy	Senegal
Brazil	Jordan	South Africa
Canada	Kazakhstan	Thailand
Chile	Kuwait	Tunisia
China	Lebanon	Türkiye
Colombia	Myanmar	United Arab Emirates
Costa Rica	Nigeria	Uganda
Egypt	Pakistan	Uzbekistan
Georgia	Palestine	Viet Nam



UN WOMEN IS THE UNITED NATIONS  
ENTITY DEDICATED TO GENDER EQUALITY  
AND THE EMPOWERMENT OF WOMEN.  
A GLOBAL CHAMPION FOR WOMEN AND  
GIRLS, UN WOMEN WAS ESTABLISHED  
TO ACCELERATE PROGRESS ON MEETING  
THEIR NEEDS WORLDWIDE.

UN Women supports UN Member States as they set global standards for achieving gender equality, and works with governments and civil society to design laws, policies, programmes and services needed to ensure that the standards are effectively implemented and truly benefit women and girls worldwide. It works globally to make the vision of the Sustainable Development Goals a reality for women and girls and stands behind women's equal participation in all aspects of life, focusing on four strategic priorities: Women lead, participate in and benefit equally from governance systems; Women have income security, decent work and economic autonomy; All women and girls live a life free from all forms of violence; and Women and girls contribute to and have greater influence in building sustainable peace and resilience, and benefit equally from the prevention of natural disasters and conflicts and humanitarian action. UN Women also coordinates and promotes the UN system's work in advancing gender equality.



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