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978-1-107-02832-6 - Public Procurement Regulation in Africa
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PUBLIC PROCUREMENT REGULATION IN AFRICA

Public procurement regulation in Africa is not widely researched. To address the shortage of scholarship in this area and to promote future research, this book analyses the law governing public procurement in a number of African systems and looks at key themes relevant to all African states. Part I discusses the regulatory regimes of nine African systems using a common framework, providing both a focused view of these African systems and an accessible comparative perspective. In Part II, key regulatory issues in public procurement that are particularly relevant in the African context are assessed through a comparative approach. The chapters consider the influence of international regulatory regimes (particularly the UNCITRAL Model Law on procurement) on African systems and provide insights into the way public procurement regulation is approached in Africa.

GEO QUINOT is Professor of Law in the Department of Public Law at Stellenbosch University, where he is also Director of the African Public Procurement Regulation Research Unit (APPRRU) and Co-Director of the Socio-Economic Rights and Administrative Justice Research Project (SERAJ).

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Cambridge, New York, Melbourne, Madrid, Cape Town,
 Singapore, São Paulo, Delhi, Mexico City

Cambridge University Press
 The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org

Information on this title: www.cambridge.org/9781107028326

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First published 2013

Printed and bound in the United Kingdom by the MPG Books Group

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

Public procurement regulation in Africa / edited by Geo Quinot
 and Sue Arrowsmith.

p. cm.

Includes bibliographical references and index.

ISBN 978-1-107-02832-6 (hardback)

1. Government purchasing – Law and legislation – Africa, Sub-Saharan.

I. Quinot, Geo. II. Arrowsmith, Sue, 1962–

KQC234.3.P83 2013

352.5'30967 – dc23 2012027128

ISBN 978-1-107-02832-6 Hardback

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PREFACE AND ACKNOWLEDGMENTS

This book developed out of a three-year research partnership between the University of Nottingham and the University of Stellenbosch under the British Academy's UK–Africa Academic Partnerships scheme. The main aim of the project was to examine the current state of public procurement regulation in Africa, with an initial focus on Southern Africa, in key areas. The project was developed because of the extremely limited academic engagement to date with African public procurement systems. While public procurement regulation has recently developed as a distinct field of legal academic study in other continents and is increasingly playing a key role in international legal regimes, such as that of the WTO, the level of academic engagement with this area in Africa has been negligible. There have been only two comprehensive national studies published and a handful of academic articles, as indicated in the bibliography included in this book.

The goal of the project and hence of this book is to assist African domestic development and to inform legal research and policy-making, both through its short-term outputs, primarily in the form of this book, and long-term impact. In the latter respect, this project aims, *inter alia*: (i) to provide foundations for future research on African procurement regulation; (ii) to provide the foundation for specific research and teaching programmes to secure long-term academic capacity in Africa; and (iii) to provide a platform for African scholars to develop research partnerships and gain access to broader international scholarship. The project also seeks to provide interested parties outside Africa with access to materials on African procurement, so that they may incorporate African perspectives into academic work and policy-making activities.

From its inception, we realised that the project was an ambitious one and thus initially limited the focus to Southern Africa. In developing the book, however, we decided that a broader focus drawing on systems from across the continent would better serve the project's purposes. However, pragmatic problems such as access to materials, language barriers and

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finding research partners in different countries remained and played an important role in the final decision on which countries to include. Eventually, we included Botswana, Ethiopia, Ghana, Kenya, Namibia, Nigeria, Rwanda, South Africa and Zimbabwe, providing a good sample of sub-Saharan systems. Our aim is thus not to present either a full perspective – or even a representative view – of all African public procurement regulatory systems. In line with the objectives of the project, the book is only a starting point for further work to be done, and the systems included thus serve as examples of public procurement regulation in Africa.

The method used in the book is doctrinal legal analysis, covering both hard law (legislation and case law) and ‘soft law’ norms, since the latter play an important role in procurement in some countries. No new empirical work was done. As far as possible, the study of a particular system was done by local researchers working, in most cases, in collaboration with established researchers in the field of public procurement regulation.

Many persons contributed to the production of this book or otherwise provided necessary support. In the first place, we are grateful to the British Academy for the funding that made this project possible, as well as for the Academy’s flexibility in allowing us to adapt the research programme as changing circumstances demanded. We are also grateful to the administrators at the University of Nottingham for providing excellent administrative support to the project and in particular to Anne Crump, Anne Snape, Jane Costa and Jill Gunn.

Early versions of some of the papers incorporated in the volume were presented at the Conference on ‘Public Procurement – Global Revolution V’ in Copenhagen in September 2010 and at the Conference on ‘African Public Procurement Regulation’ in Stellenbosch in October 2011. We are grateful to all those who made presentations at or assisted in the organisation of these events, or provided input on the material presented, and in particular to the sponsors of the latter event where the bulk of the research was presented: Achilles Information Ltd, the British Academy, Cambridge University Press, LexisNexis, the National Research Foundation (South Africa) and the Stellenbosch University Faculty of Law.

At the School of Law of the University of Nottingham and at the Stellenbosch Law Faculty thanks are due to all those who worked on technical aspects of the manuscript, in particular to Richard Craven, Megan Alberts, Gillian Armstrong, Michael Clark, Jan-Hugo Fyfer and Petrus Maree, for their very efficient contributions.

At Cambridge University Press we are grateful to Elizabeth Spicer and Kim Hughes, both for their enthusiasm for the project and patience in

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waiting for us to deliver on it, and to the many other staff at Cambridge for their able assistance in readying the manuscript for production.

We also record our very sincere thanks to the authors/co-authors of all the chapters of the book, who freely gave of their time and insights and whose contributions made the book possible, as well as to many administrators, practitioners and researchers in many African countries and beyond for providing us with relevant materials, answering questions and, where they could not help, putting us in contact with those who could.

Most of all, we express our appreciation to our spouses and children for their support and encouragement, without which this project could not have been completed. This book is for them.

Geo Quinot
and
Sue Arrowsmith

ABBREVIATIONS

AAA	Accra Agenda for Action
ACC	Anti-Corruption Commission (Namibia)
AfDB	African Development Bank
B-BBEE	Broad-Based Black Economic Empowerment (South Africa)
BEE	black economic empowerment (South Africa)
BPP	Bureau of Public Procurement (Nigeria)
COMESA	Common Market for Eastern and Southern Africa
CPAR	Country Procurement Assessment Report
CSO	civil society organisation
CUTS	Consumer Unity & Trust Society
DAC	Development Assistance Committee (OECD)
EAC	East African Community
ECOWAS	Economic Community of West African States
EFCC	Economic and Financial Crimes Commission (Nigeria)
FEC	Federal Executive Council (Nigeria)
FIDIC	Fédération Internationale des Ingénieurs-Conseils (International Federation of Consulting Engineers)
FPPA	Federal Public Procurement and Property Administration Agency (Ethiopia)
GDP	gross domestic product
GPA	Agreement on Government Procurement (WTO)
HDI	historically disadvantaged individual (South Africa)
HIPC	highly indebted poor country
IBRD	International Bank for Reconstruction and Development
ICRC	Independent Complaints Review Committee (Botswana)
IDA	International Development Association
IMF	International Monetary Fund
IRP	Independent Review Panels (Rwanda)
KENAO	Kenya National Audit Office
LDC	least developed country
MDA	ministries, departments and agencies
MSE	micro and small-scale enterprise

LIST OF ABBREVIATIONS

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NGO	non-governmental organisation
NTB	National Tender Board (Rwanda)
ODA	official development assistance
OECD	Organization for Economic Co-operation and Development
PEC	Procurement Endorsing Committee (Ethiopia)
PPA	Public Procurement Act (Nigeria)
PPA	Public Procurement Agency (Ethiopia)
PPAD Act	Public Procurement and Asset Disposal Act (Botswana)
PPADB	Public Procurement and Asset Disposal Board (Botswana)
PPOA	Public Procurement Oversight Authority (Kenya)
PPP	public–private partnership
PPPFA	Preferential Procurement Policy Framework Act (South Africa)
RFP	request for proposal
RFQ	request for quotation
RPPA	Rwanda Public Procurement Agency
SACU	Southern African Customs Union
SADC	Southern African Development Community
SME	small and medium-sized enterprise / small, medium and micro enterprise
TIPEEG	Targeted Intervention Programme for Employment and Economic Growth (Namibia)
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNICEF	United Nations Children’s Fund
WAEMU	West African Economic and Monetary Union
WTO	World Trade Organization