

PUBLIC PROCUREMENT REFORM IN LEBANON

A Nationally led reform at risk

Progress Note June-September 2022

Prepared by the Secretariat of the Inter-ministerial Committee in charge of following up on the public procurement reform.ⁱ

Highlights

- *Despite challenges of many folds and a multi-faceted crisis considered by the World Bank as the third most severe crisis across the globe since the 19th century, Lebanon was able to mark a key milestone through **the steady, but challenging, advancement of Public Procurement Reform** (Section no.3: Reform Background) today considered to be the only structural reform on track.*
- ***The Inter-Ministerial Committee (IMC) chaired by the minister of Finance¹ met on April 12, 2022.** IMC is in charge of 1) reviewing the public procurement reform national strategy (NS); 2) facilitating the implementation of the NS action plan including liaising with donors; 3) follow-up on the development of secondary legislations and standard documents. The Institut des Finances Basil Fuleihan (IoF) was mandated as the Committee's Secretariat.*
- ***Although acclaimed by the development partners, the Lebanon's National Strategy and action plan approved by the Council of Ministers (Decision no.66, dated May 20, 2022) remains largely unfunded.** Current support is minimal compared to the needs: This encompasses technical, financial and human support to 1) the National Coordinator (Institut des Finances Basil Fuleihan); 2) the newly established Public Procurement Authority (PPA); 3) the yet to be established Complaints Authority (CA); 4) the set-up of an e-procurement system at the PPA; 5) the mandatory training function to be carried by the IoF.*
- ***Public procurement reform is a pillar of Lebanon's National Anti-Corruption Strategy adopted on May 2020.** Article 9 of the United Nations Convention Against Corruption (UNCAC) adopted by the United Nations General Assembly resolution 58/4 of 31 October 2003 provides for a road map to strengthening integrity in procurement. Lebanon ratified the Convention in 2009. The role of international partners is central to shape a coherent and functional reform ecosystem.*
- ***The lack of needed support has substantially slowed progress and is putting the procurement reform at risk; the risk of being interrupted or at worst reversed.** In case not supported, Lebanon will not be able to overcome related strong rooted challenges.*

Call for Action

An immediate, coordinated and synchronized support of international partners is critical, to:

- *Maintain, preserve and support the above-mentioned institutions concerned with PP law implementation and coordinating the reform effort;*
- *Design and implement e-procurement;*
- *Revive a structured policy dialogue with high level officials and decision makers;*
- *Maintain inter-institutional dialogue and coordination to reduce resistance and ensure sound implementation at all levels;*
- *Design and provide continuous and specialized high-quality training, embraced with new learning methods and technologies (e-learning), to guarantee success of the transformation process;*
- *Provide timely and customized technical advice and coaching to procurement stakeholders;*
- *Raise structured awareness across economic actors (professionals, business community, SMEs), civil society, and economic media towards a solid public engagement with the reform.*

¹ The IMC is composed of 6 ministers (Public Works and Transport, Interior and Municipalities, Industry, Environment, Economy and Trade, and the Minister of State for Administrative Reform). It was formed by virtue of the Council of Ministers Decision no. 14 dated 08/02/2022

1. PROGRESS IS SLOW PUTTING AT RISK THE REFORM MOMENTUM

The **Public Procurement Law no. 244/2021** published in the Official Gazette on July 29, 2021, **entered into force on 29 July 2022**. The President of the Council of Ministers announced this during a ceremony attended by representatives of stakeholders from public and private entities, CSOs and development partners. Law 244/2021 is the result of a consultative process and the recommendations of **Lebanon’s MAPS assessment**, conducted with the technical support of the World Bank.

During the period **June to September 2022**, preparations for the entry into force of the PP law 244 were structured along the 8 axes (Figure1), listed in the National Strategy (NS) and action plan.

Figure1: National strategy working groups



PROGRESS OF WORKING GROUPS

WG1: PRIORITY SECONDARY LEGISLATIONS

Deliverable	Status	Progress
Public Procurement Authority <ul style="list-style-type: none"> • 2 Decrees for PPA finalized and presented by the Head of the PPA to the President of the Council of Ministers (administrative procedures + financial procedures) - Not yet reviewed and approved • 2 Decrees for PPA (nominations + staff organization) 	In progress	80% 20%
Complaints Authority <ul style="list-style-type: none"> • 5 Decrees for Complaints Authority (nominations + staff organization + administrative procedures + financial procedures +Modus operandi) 	In progress	50%
7 Decrees for a sound performance of the procurement system <ul style="list-style-type: none"> • Internal audit function (first draft only) • Use of framework agreements • Composition of procurement unit at procuring entity • Contract acceptance conditions in case of deficiencies • Job description, competencies, and recruitment • Sustainable public procurement • Electronic procurement 	Not initiated	10%

WG2: STANDARD PROCUREMENT DOCUMENTS (SPDs)

The development process of SPDs include drafting, consultations, peer review and training of concerned stakeholders.

Deliverable	Status	Progress
<ul style="list-style-type: none"> 3 SPDs for Goods, Works and Services (including 2 consultation sessions with public sector and business community) <p><i>Need review, testing, finalization, and training</i></p>	In progress	30%
<ul style="list-style-type: none"> 3 Simplified SPDs for Goods, Works and Services (in addition to consultation, review, testing and training) 	Not initiated	0%
<ul style="list-style-type: none"> 3 SPDs for framework agreements - small works, goods, consultancy services (+consultation, review, testing and training) 	Not initiated	0%
<ul style="list-style-type: none"> Sectoral SPDs 	Not initiated	0%

WG3: GUIDELINES AND TOOLS

As Law 244 introduces new practices and procurement methods, there is an exponential need at the level of procuring entities to access guidelines and tools to reduce miscomprehension and facilitate implementation.

Deliverable	Status	Progress
<ul style="list-style-type: none"> 1 Draft explanatory guidelines on Law 244 <p><i>Need review, testing, finalization, and training on use</i></p>	In progress	50%
<ul style="list-style-type: none"> 2 User friendly guides on Law 244 (to Parliamentarians / to citizens and stakeholders) 	Completed	100%
<ul style="list-style-type: none"> +60 Forms and templates identified <p><i>Need development, testing, finalization, and training on use</i></p>	In progress	25%

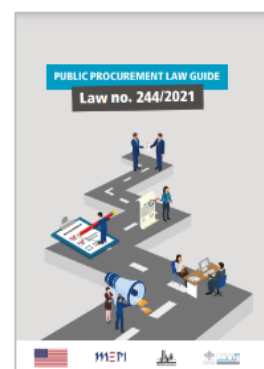
The IoF is supporting the PPA by putting at its disposition a number of its experts-trainers

Following the urgent need for clarification and explanations of Law 244 by small municipalities and autonomous public institutions, **the Institute has agreed, despite lack of resources, to put at the disposition of the PPA its team of accredited experts-trainers to provide coaching and clarifications online and in writing to procuring entities during the first phase of entry into force of the law.**

Requests are forwarded by the PPA to a coordinator-expert who screens and prioritizes requests. The experts meet weekly to discuss the questions and design proper answers. The answers are then drafted and submitted to the PPA head for consideration.

- 70 requests for clarifications received from various procuring entities
- 6 weekly expert meetings to consult on request for clarifications
- 5 Q&A sessions organized for procuring entities
- 1 compiled reference document published containing responses and clarifications
- Support to PPA in issuing forms, memos and providing technical assistance to procuring entities

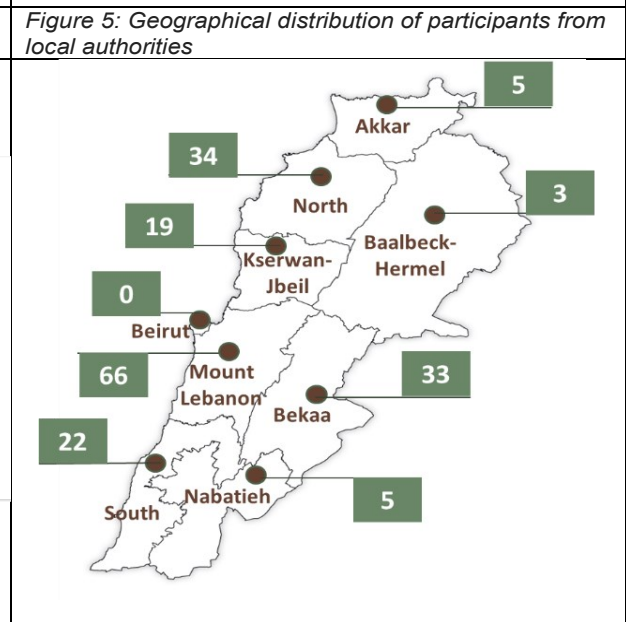
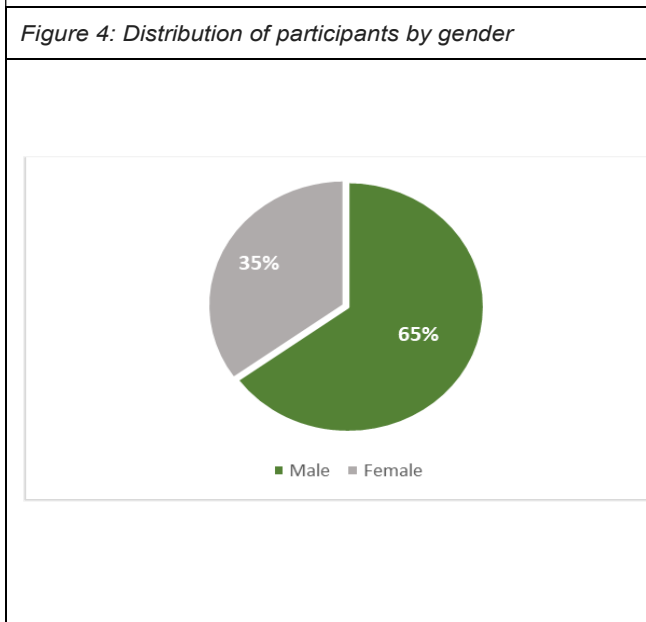
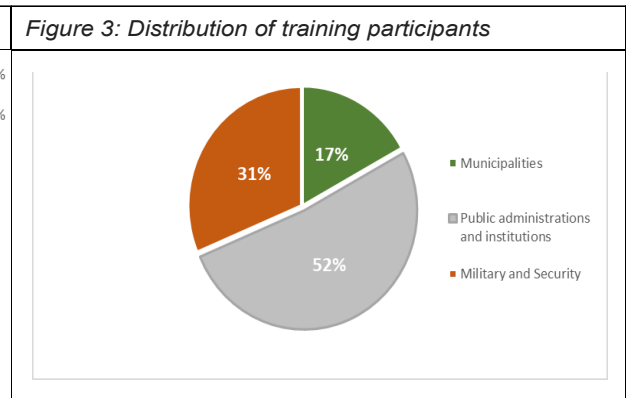
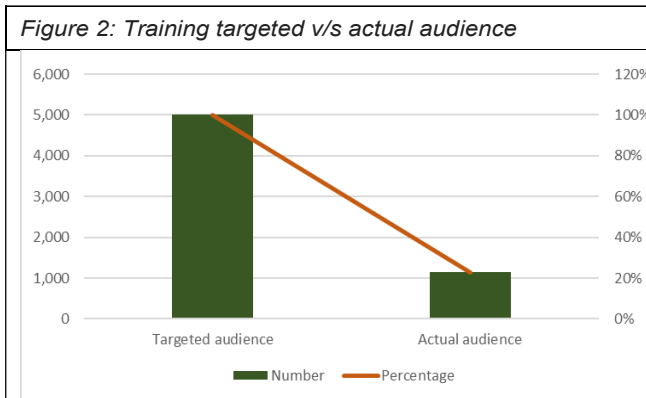
To preserve and maintain this initiative, continue assisting procuring entities, prevent conflicts and track challenges faced in law implementation, **there is a need to mobilize resources to maintain operational this task force equipped with experts from diverse backgrounds and digitized tools for monitoring and evaluation.**



WG4: TRAINING AND PROFESSIONALIZATION

The Institut des Finances is mandated by Article 72 of Law 244 to provide continuous and specialized training on public procurement. Due to scarcity of resources, the Institute pursued its mission via Zoom to introduce all concerned public sector stakeholders to the Law and answer clarifications and questions. **The scarce resources have negatively impacted the progress. Training is limited to 1 general introductory course with an outreach limited to 20% of targeted beneficiaries (1,148 out 5,000 participants) (Figure 2 below). Municipalities are increasingly requesting training from the Institute; however, the capacity to respond remains very low. No “technical” training was yet designed and delivered, challenging the proper implementation of Law 244 and hindering change across the system.**

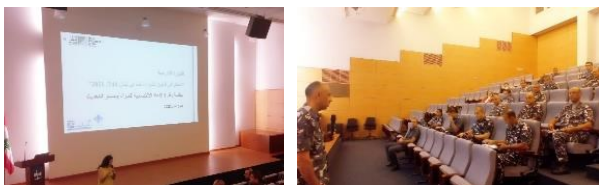
Deliverable	Status	Progress
• 1 Full-fledged introductory course on Law 244 with a graded exam	Completed	100%
• 14 Expert-trainers trained and accredited • 17 Additional trainers are being prepared	In progress	45%
• +100 Official requests for training received from across public sector • 1,148 Participants to introductory training on Law 244; among which 187 from local authorities out of 5,000	In progress	20%
• On-Line training platform	Not initiated	0%
• Competency based training framework & 6 specialized curricula	Not initiated	0%



On-going general introductory training on Law 244

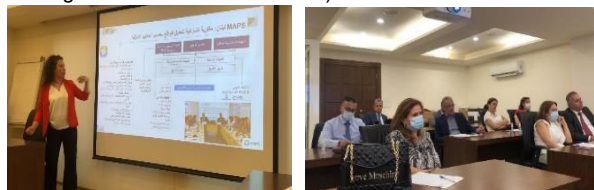
Lebanese Armed Forces and Security Forces

2 TOT programs for LAF; 24 trained trainers
9 training sessions
226 LAF officers and 134 security officers & practitioners



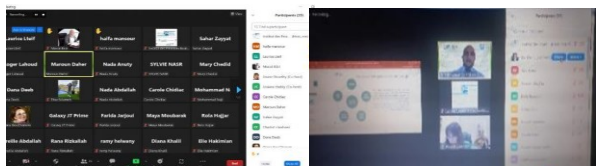
Oversight bodies

24 Judges from the Court of Accounts & the State Council
12 auditors from the Court of Accounts
12 participants from the Central Tender Board (preparatory training on PPA role and missions)



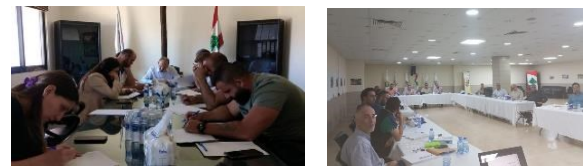
Ministries and public institutions

16 online training sessions on the Law; 593 participants



Municipalities and UoM

187 mayors, senior officials and practitioners introduced to the Law



WG5: COMMUNICATION, DIALOGUE AND AWARENESS

10%
Progress

Reform implementation shall be accompanied by timely, proper and customized communication, to sustain political commitment and buy-in, reduce resistance, and build alliances with change makers and influencers across society.

There is a need for resource mobilization to develop and implement a strategic communication plan for solid stakeholder engagement and effective policy dialogue and public information.

Inter-institutional dialogue on public procurement reform

In complementarity with training efforts, and in order to smoothen the implementation process, preserve commitment to the reform and reduce resistance, **an inter-institutional dialogue was initiated and coordinated by the Institut des Finances Basil Fuleihan**. Regular meetings are being held with:

- Ministry of Finance (Directors and senior officials from 3 directorates: Budget, Expenditures & Public Accounting)
- Ministry of Interior and Municipalities (Minister and senior officials)
- Court of Accounts (President and Judges)

Memorandum of Understanding between the Public Procurement Authority and the Institut des Finances

With the entry into force of the Public Procurement Law on July 29, 2022, **a memorandum of understanding (MOU) was signed between the Public Procurement Authority and the Institut des Finances Basil Fuleihan**, in the aim of sustaining partnership around public procurement, to develop national capacities, raise the level of performance and contribute to achieving the best value from money, in line with Law 244 provisions.

WG6: CENTRAL ELECTRONIC PLATFORM

Series of consultation with stakeholders including the PPA, the Office of the Minister of State for Administrative Reform, civil society, the private sector, and the donor community were held during the period 2021-2022. A draft strategy for e-procurement was prepared in cooperation with the WB. A grant proposal was presented to the Global Procurement Partnership. Negotiations, auditing and vetting of the implementing agency and preparations of the grant documents were finalized and ready to sign by the Minister of Finance following approval by authorities. Progress on this front is stalled by bureaucracy and lengthy processes. This is putting at risk the execution of the grant (expiring on June 2023) and the readiness of the platform. The Public Procurement Authority is temporarily using its current website for publication for the immediate term.



A fully functional central electronic platform **is a critical component for effective law implementation** and for transparency, integrity and accountability requirements. It is also an enabler for competition and cartels breaking.

The central electronic platform needs to be developed and put into operation asap to allow proper publication, notifications, data analysis and regular reporting.

WG7: RISK MANAGEMENT

The national strategy on public procurement reform identified **the need to develop a risk management strategy and tools to efficiently identify and mitigate procurement risks.**

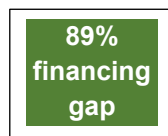
In collaboration with OECD, a policy brief was published to highlight the importance of this concept and provide recommendations towards developing a tailored public procurement risk management strategy based on the national context and international good practices. The policy brief was based on international standards, benchmarks, country practices, and local needs gathered on the occasion of a national workshop.



To instil a risk management culture in public procurement, support is needed for the development of a dedicated risk management strategy with a detailed implementation timeline and tools, along with stakeholders' buy-in and engagement.

WG8: RESOURCE MOBILIZATION

In its capacity as National coordinator and Secretariat of the IMC, the Institute is keeping a lively dialogue with the donor community.



In April and June 2022, two donor coordination meetings were organized to present and discuss the progress of the various reform components and communicate on challenges. The meetings were occasions to highlight to international partners the reform's needs in terms of direct support and technical assistance. Table 1 summarizes technical assistance effectively provided and the financing gap.

With the entry into force of the Law, there is a tremendous **need to maintain and preserve national efforts to advance this reform agenda, to face resistance and guarantee the success of this transformation process. A synchronized support of international partners is critical for a coordinated action and the sustainability of a nationally led process.**

Table 1 : Financing gap 2022-2024

No	Area of support	Revised Estimated Cost (in USD)	Technical assistance provided for the period 2021-2023 by:					FINANCING GAP (in USD)	
			AFD (eqv. in USD)	EBRD (eqv. In USD)	OECD (eqv. in USD)	OECD-SIGMA (eqv. in USD)	World Bank (in USD)		WFD (in USD)
1	Legislations (drafting, reviews, consultations, finalization)	165,000	61,480			1,272	25,000		77,248
2	Standard Tender Documents (development, consultations, testing, finalization) including SPDs (goods, works, services), Simplified SPDs, SPDs for FAs (goods, works, services), Sectoral SPDs	450,000	31,800				85,800		332,400
3	Guidelines & Tools (development, consultations, testing, finalization)	200,000	19,080			8,480		12,000	160,440
4	Training and Professionalization (specialized and technical content development, customization, deployment, online learning)	1,150,000	130,590				92,350		927,060
5	Communication & Awareness	160,000					12,500	18,400	129,100
6	Electronic Procurement	1,800,000	8,480						1,791,520
7	Risk Management (Awareness, strategy & tools)	150,000			10,600				139,400
8	Technical Support to Public Procurement Authority	600,000							600,000
9	Technical Support to Complaints Authority	300,000							300,000
10	Technical Support to National Coordinator	600,000	67,416	31,800					500,784
	Total	5,575,000	318,846	31,800	10,600	9,752	215,650	30,400	4,957,952

2. CHALLENGES TO REFORM

With the entry into force of Law 244, specific challenges are witnessed putting the reform at risk:

- Amendments to the law have been submitted by two parliamentary groups in the first two weeks of the PP law entry into force:** Two draft laws proposed amendments to Law 244 provisions to exclude municipalities and unions of municipalities from the scope of its application.

Law 244 amended in the 2022 Budget Law voted by Parliament

Following discussions in the Interior and Defense Parliamentary Committee, to which the Institut des Finances was invited to take part to, **slight amendments to the PP Law no. 244/2021 were introduced with the adopted Budget law voted by the Parliament on September 26, 2022**, to smoothen implementation for procuring entities, with special attention to small municipalities. Amendments affected 3 articles of the PPL: Article 46, Article 101 (Paragraphs 1 and 3) and Article 60.

- The resistance to change and to applying the Law is significant creating an unfavorable environment vis-à-vis the reform.** This is considerable from public institutions who have either presented to CoM requests to be excluded from the law (Central Bank of Lebanon) or ignored the law and did not respond to the requests of the IoF to join the training, nor to the decision No22 of the Prime Minister.

Circular No22 calling for Law 244 effective implementation

The President of the Council of Ministers issued Circular no. 22/2022 on August 16, 2022, calling on all procuring entities to abide by Law 244 and to undertake necessary internal and organizational measures pertaining to the allocation of specialized procurement staff, the coordination with the Public Procurement Authority (PPA) concerning formation of tender and acceptance committees, and the coordination with the Institut des Finances Basil Fuleihan for training of procurement practitioners.


3. **The Prime Minister has yet to call for the recruitment of the PPA and the CA members.**
4. There is an increasing demand for training and coaching to procurement stakeholders across the public sector. **There are limited operational capabilities for response at the Institute that is mandated by Law 244 to provide mandatory and specialized training**, due to the current operational challenges including energy, the cost of transportation, etc. **Investing in on-line learning and testing platforms as well as self-paced learning is crucial to ensure there are enough cohorts of qualified staff to join tendering and acceptance committees.**
5. **The Public Procurement Authority (PPA), is under pressure to respond to all procuring entities and to answer their technical clarifications** in view of facilitating law implementation, and minimizing the risk of noncompliance. The PPA is often providing one-to-one counselling and advice to institutions; **all this with the absence of an operating budget for the PPA and adequate human and technical resources.**
6. **The National Coordinator, Institut des Finances Basil Fuleihan, suffers from shortages in adequate human, technical and financial resources** to coordinate this nationwide reform.
7. **Scarcity of financing and support from the international community to the reform’s NS and action plan, starting with the priority actions of the 8 working streams**, hinders reform progress and puts its outcomes at risk.

3. REFORM BACKGROUND


Despite numerous challenges and a multifaceted economic and financial crisis facing Lebanon, **Public Procurement Law 244/2021 entered into force on July 29, 2022**. Law 244 is the result of an evidence-based, consultative and participative process to reform an archaic, fragmented public procurement system non-compliant to international standards that led to losses in billions of dollars, degraded public services, and colluded practices.

The Law’s entry into force marks a key milestone on the path of needed structural reforms that the Government of Lebanon committed to at CEDRE Conference (2018) and across successive declarations since 2019. **The Law’s implementation is a renewal of Lebanon’s commitment to the anti-corruption agenda** (the commitment to UNCAC and the enactment of a set of national anti-corruption legislations) **and to the International Monetary Fund’s Staff-level agreement** that mentioned *“the modernization of the PFM framework, implementation of the recently approved procurement law... will increase transparency and spending efficiency”*.

Law 244 is the fruit of four years of national commitment and progress against all odds



- ✓ **June 2018:** First national Forum on Public Procurement
- ✓ **2019-2020:** MAPS Assessment and design and drafting of new PP Law (Law voted June 30, 2021)
- ✓ **July 29, 2021:** PP Law 244/2021 issued
- ✓ **March 2022:** Lebanon report got **MAPS secretariat quality seal**
- ✓ **August 1, 2022 :** PP Law 244/2021 entered into force
 - ✓ Paves the way for **Sustainable Public Procurement**
 - ✓ Frameworks for real **accountability** and fighting **corruption**
 - ✓ A **governance framework** aligned with best practices (an independent regulatory authority and an independent review body will be created).
- ✓ **May 20, 2022:** A **National Strategy and action plan** endorsed by the Council of Ministers on. all thanks to an amazing team and partners
- ✓ Stakeholders in government agencies (civil and military) **owning the reform** are now training and working to prepare the implementation phase
- ✓ Lebanese civil society organizations and good businesses are actively **lobbying** for accountability transparency and fair competition
- ✓ A group of expert-trainers are now organized in **7 working groups preparing implementation** ready to form a “Help desk”
- ✓ A group of **supportive** decision makers and Parliamentarians



ⁱ This progress report has been prepared by the Secretariat of the Inter-ministerial Committee in charge of following up on the public procurement reform.

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