

PUBLIC PROCUREMENT REFORM IN LEBANON

A Nationally led reform at risk

Progress Note October 2022 - April 2023

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

Reform Highlights

- Despite challenges of many folds and a multi-faceted crisis, Lebanon was able to mark a **key milestone in advancing Public Procurement Reform** through the voting on June 30, 2021 and entry into force in July 29, 2022 of the Public Procurement Law (PPL) 244/2021. The country has failed to advance other key structural reforms committed to in the Staff Level Agreement concluded with the International Monetary Fund in April 2022.
- The PPL 244/2021 is based on the UNCITRAL Model Law and on the OECD 12 guiding principles on Public Procurement. It is the result of a consultative process and the recommendations of [Lebanon's MAPS assessment](#), conducted with the technical support of the World Bank. It is also the result of 2 years of national consultations, benchmarking with the international practices and of close working relationship with international organizations, namely the World Bank, the Agence Française de Développement and OECD-SIGMA that provided technical assistance throughout the period 2019 till 2021.
- **The latest International Monetary Fund's Staff Concluding Statement of the 2023 Article IV Mission of March 23, 2023 stated clearly that "the approved procurement law, which is in line with the best international standards, should be implemented promptly, starting with the full functionality of the Procurement Authority and the e-procurement platform".**
- **A recent statement dated April 26, 2023 by the Ambassadors of Canada, France, Germany, Italy, Japan, the United Kingdom, the United States, and the European Union in Beirut has called the Lebanese Authorities to urgently initiate a multi-pronged reform program necessary to restore financial stability, fight corruption, install a sustainable path for public finances, regain the confidence of investors through enhanced transparency and accountability and rebuild the economy.**
- **Public procurement reform is one of the ambitious structural reforms needed to create an enabling environment for stronger inclusive growth in Lebanon.** It is a pillar of Lebanon's National Anti-Corruption Strategy adopted in May 2020.
- **However, and despite promises of support conditioned to entry into force of PPL 244, Lebanon's National Strategy and Action Plan approved by the Council of Ministers (Decision no.66, dated May 20, 2022) remains largely un-funded.** Current support remains 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 Institut des Finances; 6) the design of competency frameworks and creation of procurement profession; 7) communication and awareness; 8) risk management; etc. At the meeting of the Inter-Ministerial Committee on Public Procurement Reform on November 7, 2022, the Institut des Finances Basil Fuleihan, in its capacity as Secretariat of the Committee and National Reform Coordinator, stressed the challenges and barriers caused by the lack of support to the various reform components.
- **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.**
- **Public procurement reforms worldwide necessitate well-constructed change management approaches, good coordination among various actors, coaching, accompaniment, explanation and awareness building which, if not provided, will reinforce resistance to change and build strong incentives to delay or divert the reform process.**

"The procurement process is not an end in itself, but serves the delivery of public services and should be designed to drive fiscal performance in government, which should result in a high-quality public service for citizens."

[Transformational Change: EBRD-UNCITRAL Public Procurement Initiative](#)

Challenging time for the implementation of the Public Procurement Law no.244/2021

With the entry into force of PPL 244 in July 2022, specific challenges are delaying and diverting the reform and putting it at risk:

1. On the Legislative front:

- Four proposals for amending the PPL no. 244/2021 by four different political groups were submitted to Parliament. On April 18, 2023, the Parliament voted in the form of “legal urgency” one of the proposals in a swift vote without discussing it or mentioning the other three. The vote was widely regarded as unconstitutional since the Parliament is in electoral exercise and not in a legislative one. This situation prompted 11 parliamentarians to submit an appeal before the Constitutional Council to annul this vote.
- It is to note that **the proposed as well as voted amendments did not result from any legislative impact assessment exercise** which, if it were to be done, would have provided evidence-based information and insights on the way forward and priorities for amendments. Furthermore, **they were not based on any inclusive consultative exercise, and came in contrary to the OECD 12 guiding principles on Public Procurement, namely the principles of inclusiveness, integration, competition, transparency and accountability.** The amendments were not read out loud during the parliamentary session nor discussed in parliamentary committees.
- The amendment carries several risks in terms of the effective implementation of PPL no.244/2021. The main risks are:
 - (i) with respect to creating a conflictual mandate of the Public Procurement Authority being a regulator and now also in charge of transactional aspects of the bidding process, which negatively affects accountability;
 - (ii) restituting the classification practice (versus proposed pre-qualification), which is historically a gateway to clientelism and elite capture limiting competition and entry of newcomers into public markets.

Other risks are related to budget integration, timely access to information, transparency in blacklisting, etc.

- **Also to be noted that the National Coordinator intends to conduct, following one year of entry into force of PPL 244/2021, a legislative impact assessment survey and a series of consultations resulting in the production of report highlighting success areas and challenges encountered in PPL 244 implementation, and providing as well policy recommendations on the way forward.**

2. On the Institutional front:

- No progress or preparatory work was done in view of institutionalizing the two new authorities, i.e the Public Procurement Authority and the Complaints Authority including their regulations, initiating the process of recruiting their members (advertising, soliciting CVs, undertaking interviews, etc.), designating a location for them, ensuring their operationalization and staffing, etc.

3. On E-procurement:

- There is no progress yet on this front. There seems to be a focus on more immediate issues, and this potential power remains under-looked. The reform of public procurement is highly complex and may meet inner resistance as noted above. As shown by evidence, many reform programmes may not meet success if they do not harness the potential of digitization – in particular, through the effective use of digital and open data. The digitalization of public procurement is a chance to allow procurement officials to move beyond the complex regulations, to be relieved from clerical tasks, and to focus on expanding their knowledge and improving performance.

4. On Capacity Building:

- As the Law is being implemented, the demand for training and coaching to procurement stakeholders across the public sector has increased. However, the limitations in terms of technical and financial

support are hindering progress on this front. This is reinforcing resistance among opponents of the reform and within procuring entities. 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 involved in public procurement at the level of procuring entities, that abide by the provisions of the Law.

5. On Reform Coordination:

- The Institut des Finances Basil Fuleihan, in its capacities as National Coordinator, suffers from shortages in adequate human, technical and financial resources to coordinate this nationwide reform.
- **Scarcity of financing and support from the international community to the reform's National Strategy and Action Plan, starting with the priority actions of the 8 working streams, hinders reform progress, reinforces the attempts to reverse its course, and puts its outcomes at risk.**

Call for Action

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

- *Support the National Coordinator in conducting a rapid assessment of law implementation in consultation with stakeholders and experts, leading to drafting recommendations on way forward including proposing amendments that are in alignment with best practices. Such an exercise would help reinstall confidence in the reform process.*
- *Step-up the support to the coordination of the reform at the national level so that resistance to change is mitigated. Scarce support from the donor community (financial and technical) to the coordination of the reform process is putting at risk this only reform and empowering those who are lobbying **for delaying, diverting or derailing it.***
- *Fasten the implementation of e-procurement and the issuance of standard bidding documents and related manuals, forms and templates;*
- *Maintain the structured policy dialogue with decision makers and inter-institutional dialogue and coordination with stakeholders to reduce resistance and ensure sound implementation at all levels;*
- *Support the design and provision of continuous and specialized high-quality training, embraced with new learning methods and technologies (e-learning), to guarantee success of the transformation process;*
- *Step-up provision of structures support and technical advice and coaching to procuring entities;*
- *Maintain the structured awareness across economic actors (professionals, business community, SMEs), civil society, and economic media towards a solid public engagement with the reform.*

1. PROGRESS IS SLOW PUTTING AT RISK THE REFORM MOMENTUM

This section presents progress of the public procurement reform during the period **October 2022 till April 2023**, along the 8 working groups (Figure1) defined in the National Strategy (NS) and action plan.

Figure1: National strategy working groups



PROGRESS OF WORKING GROUPS

WG1: PRIORITY SECONDARY LEGISLATIONS

| Deliverable | Status | Progress period |
|--|---|--|
| 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) • Decision on Internal Audit | In progress; responsibility of PPA | 80% 20% 50% |
| Complaints Authority <ul style="list-style-type: none"> • 5 Decrees for Complaints Authority (nominations + staff organization + administrative procedures + financial procedures +Modus operandi) | In progress; ground preparation until CA is established | 50% |
| 6 Decrees for a sound performance of the procurement system <ul style="list-style-type: none"> • 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 | In progress | 10% |

WG2: STANDARD PROCUREMENT DOCUMENTS (SPDs)

The development process of SPDs includes drafting, consultations and peer review and training of concerned stakeholders to standardize procedures, ease implementation and increase transparency.

| Deliverable | Status | Progress |
|--|---|----------|
| • 3 SPDs for Goods, Works and Services | Submitted to PPA for publication | 90% |
| • 3 Simplified SPDs for Goods, Works and Services | 2 submitted to PPA for publication; 3 rd in progress | 75% |
| • 3 SPDs for framework agreements - small works, goods, consultancy services (+consultation, review, testing and training) | In progress | 10% |
| • Sectoral SPDs | Not initiated | 0% |

WG3: GUIDELINES AND TOOLS

As PPL 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, however progress on this front is not optimal.

| Deliverable | Status | Progress |
|--|--|----------|
| • 1 Draft explanatory guidelines on Law 244 (+consultation, review, testing and training) | In progress; pending validation and publication by PPA | 50% |
| • 2 User friendly guides on Law 244 (one addressed to Parliamentarians / one to citizens and stakeholders) | Completed | 100% |
| • +60 Forms and templates identified (development, testing, finalization, and training on use) | In progress; pending completion and publication by PPA | 30% |

WG4: TRAINING AND PROFESSIONALIZATION

The Institut des Finances is mandated by Article 72 of PPL 244 to provide continuous and specialized training on public procurement (*Figure 1*). Due to scarcity of resources, the Institute pursued its mission via Zoom to introduce procuring entities and other public sector stakeholders to the Law and answer clarifications and questions. A core group of 15 experts-trainers have been certified by the Institute to conduct training on PPL 244/2021.

Training is still limited to 1 general introductory course with an outreach of 49% of targeted beneficiaries (2,455 out 5,000 participants) (*Figure 2*). Municipalities are increasingly requesting training for them to comply with the Law; however, the capacity to respond remains very low. (*Figure 4*)

The Institut des Finances also started the **design of specialized courses focusing on priority areas such as procurement planning, procurement methods, and contract management**, with the technical assistance of Agence Française de Développement and the World Bank. The full-fledged courses need to be completed, piloted and delivered to targeted audiences. Other thematic need also to be tackled. **The scarce resources for new modules development, testing, training delivery and coaching are negatively affecting progress.**

| Deliverable | Status | Progress |
|---|---------------|----------|
| <ul style="list-style-type: none"> 1 Full-fledged introductory course on PPL 244 with a graded exam; Out of 1,694 participants who sit for the graded exam, 970 passed it | Completed | 100% |
| <ul style="list-style-type: none"> 2 new specialized and technical training contents | In progress | 40% |
| <ul style="list-style-type: none"> 15 Expert-trainers trained and accredited 19 Additional trainers are being prepared | In progress | 50% |
| <ul style="list-style-type: none"> +150 Official requests for training received from across public sector 2,455 Participants to introductory training on PPL 244 out of 5,000; among which 631 from local authorities | In progress | 50% |
| <ul style="list-style-type: none"> 20 awareness raising sessions on-going addressed to public sector employees and civil society organizations across Lebanon | In progress | 50% |
| <ul style="list-style-type: none"> On-Line training platform | Not initiated | 0% |
| <ul style="list-style-type: none"> Competency based training framework & 6 specialized curricula | Not initiated | 0% |

Figure 1

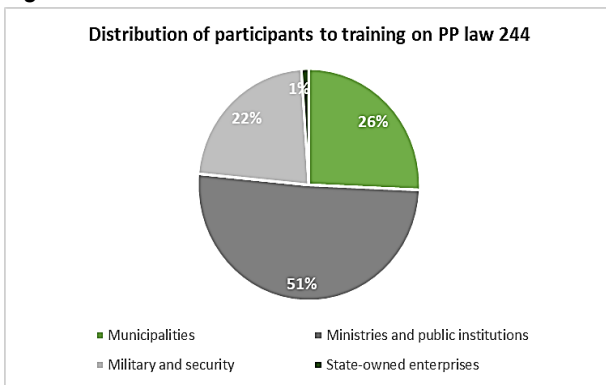


Figure 2

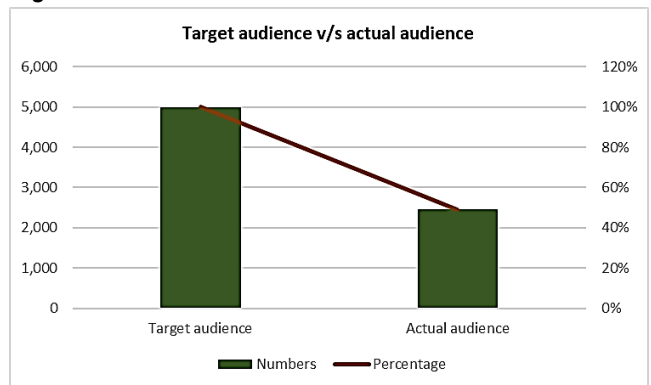


Figure 3

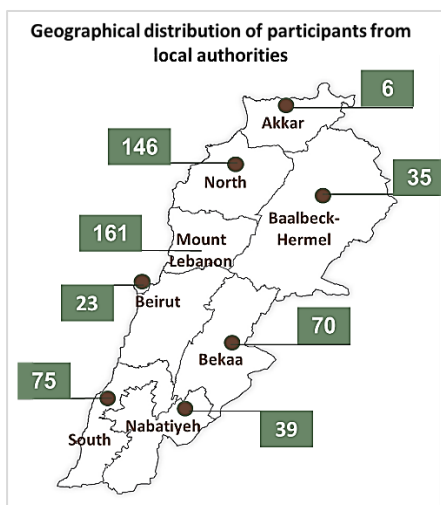
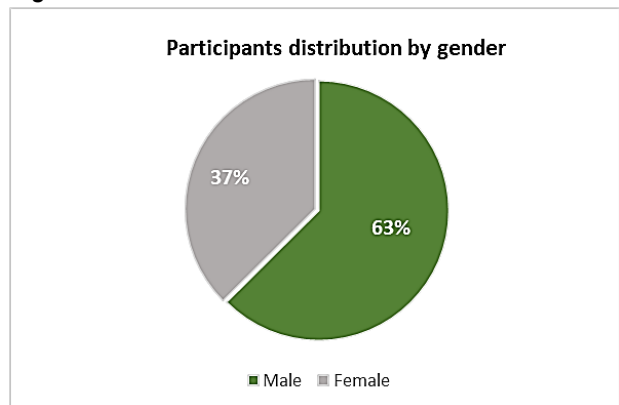


Figure 4



On-going general introductory training on PPL 244

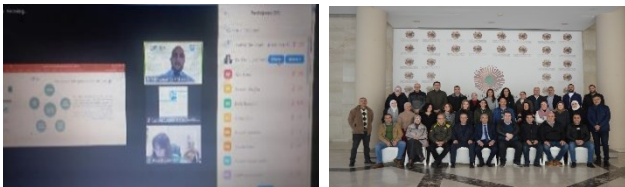
Lebanese Armed Forces and Security Forces
 2 TOT programs for LAF; 24 trained trainers
 9 training sessions
 226 LAF officers and 134 security officers & practitioners



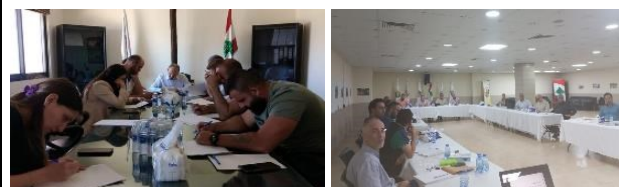
On-demand awareness to public and private sectors
 59 participants from the Banque du Liban
 3 sessions to 45 employees from the Ministry of Finance
 2 sessions at the Bar and Engineers Associations in Beirut



Ministries and public institutions
 1,248 participants across Lebanon



Municipalities and UoM
 631 mayors, senior officials and practitioners introduced to the Law through face-to-face and remote training



WG5: COMMUNICATION, DIALOGUE AND AWARENESS

20%
Progress

Reform implementation needs to 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

To smoothen the implementation process, preserve commitment to the reform and reduce resistance, **an inter-institutional dialogue has been maintained 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)
- Public Procurement Authority (President and staff)
- Ministry of Defense and the Lebanese Army (Officers from the General Directorate of Administration, the General Inspectorate and the Guardianship)
- Banque du Liban (Senior officials)

WG6: CENTRAL ELECTRONIC PLATFORM

0%
Progress

The Public Procurement Authority is currently 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 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**. A **policy brief** was published by the OECD to highlight the importance of this concept and provide recommendations towards a tailored public procurement risk management strategy based on the national context and international good practices. **No progress was done. Support is needed for the development of a dedicated risk management strategy.**

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 through regular briefing meetings and communication:

81%
financing
gap

9 high level meetings with representatives from the World Bank, the International Monetary Fund, the French Embassy in Beirut, the United Nations Development, the European Delegation, and the Embassy of Germany in Lebanon recently took place to present the reform progress, issues at stake with law implementation, and highlight the need for sustainable direct support to the various components of the national strategy and to the State institutions working on reform implementation.

In March 2023, the National Coordinator participated to the meeting of the 3RF “Anti-Corruption, Public Financial Management, Civil Service and Public Administration Reform” Working Group organized by the World Bank, in the presence of +25 representatives of government institutions, international organizations, and civil society organizations. The meeting was the occasion to **highlight the issues facing reform implementation** mainly the proposed amendments to PPL 244, as well as the lack of support to Lebanese institutions working to advance the reform. Table 1 summarizes technical assistance effectively provided and the financing gap. **Synchronized support of international partners is critical for 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) | US-MEPI (in USD) | OECD (eqv. in USD) | OECD-SIGMA (eqv. in USD) | GPP - WB executed (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 | | | | | | 320,000 | 92,350 | | 607,060 |
| 5 | Communication & Awareness | 160,000 | | | 10,000 | | | | 100,000 | 12,500 | 18,400 | 19,100 |
| 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 | 4,527,952 |

2. PRIORITIES TO SAVEGUARD A NATIONALLY-LED REFORM

In line with the National Reform Strategy and Action Plan 2022-2024 approved by the Council of Ministers (Decision no.66 of May 20, 2022), the priorities for the reform to advance are the following:

Priorities related to the High-level commitment

1. **Maintain the commitment of the Government of Lebanon to advance Public Procurement Reform**, and thus the implementation of the related Reform Strategy and its Action Plan (2022-2024) that was approved by COM decision no.66 of May 20, 2022.
2. **Maintain the engagement of the international donor community to advance public procurement reform through the allocation of proper financial, human and technical resources for its implementation.**

Priorities related to the legal and policy framework

3. **Ensuring that any future amendments to the PPL 244 are evidence-based, informed by a regulatory impact assessment and national consultations, and aligned with the Law's international standards and guiding principles.**
4. **Initiating evidence-based dialogue around key policy areas** such as sustainable public procurement, participating of small and medium enterprises, gender responsive procurement, etc.
5. **Aligning other decrees and bylaws related to oversight and control bodies with the Public Procurement Law – Pillar IV of the national reform strategy:** for example, Court of Accounts bylaw, decrees governing the cycle of pre-approvals of municipalities procurement, etc).

Priorities related to the Institutional set-up

6. **Appointments by Council of Ministers of the Public Procurement authority (PPA) members – Art. 74, 75 & 78 of PPL 244:** Currently, the PPA is led by its President, which is not a good signal, and it represents a risk for the efficiency of the PP system. The PPA shall function as a collegial authority (decisions taken by the majority of its 5 members). The PPA shall be assisted by a Technical Support Unit (TSU).
7. **Establishment and appointments by Council of Ministers of the President and members of the Complaints Authority (CA) – Art. 89, 90 & 91 of PPL 244:** Currently, the CA is absent from the system, knowing that its role is crucial for the system to ensure fair treatment and equal opportunities to all bidders. The CA shall be assisted by a Technical Support Unit (TSU).
8. **Support the National Coordinator (NC) of the Public Procurement Reform (Institut des Finances Basil Fuleihan):** The national strategy of the reform (2022-2024) mandates the Institute with a coordination role for the reform implementation, to ensure it proper coordination and synchronization, and instill inter-institutional dialogue across public sector, and dialogue with the international community. The NC shall be assisted by a Technical Support Unit (TSU). (National reform strategy Section IX).
9. **The Public Procurement Authority to establish and operationalize a fully functional central electronic platform** as a critical component for effective PP law implementation and for transparency, integrity and accountability requirements -Art. 76 of PPL 244.
10. **Establish a dedicated unit for public procurement within procuring entities** with organizational structure and clearly defined functions and responsibilities - Art.73 of PPL 244.
11. **Set up the framework for professionalization of the public procurement function - Art. 73 of PPL 244:** Set up competency frameworks, standard job descriptions and qualification requirements for public procurement officials at different levels, and across procuring entities.

Priorities related to capacity building

12. **The Institut des Finances – Ministry of Finance to continue providing training and capacity building to relevant civil servants at central and local levels, as well as other involved stakeholders - Art. 72 of PPL 244:** This training function is crucial for change management and to reduce resistance to the

implementation of the law. It is needed to equip all procuring entities with trained and highly skilled professionals in public procurement, and appropriate tools, while ensuring a high quality and specialized training content and **technical assistance to procuring entities (Help Desk)**. The training shall also **cover the private sector, continuous capacity building for national trainers while using new technologies and tools (e-learning)**.

13. **Ensuring public procurement integration into the budget preparation process (Art. 11 of PPL 244)** through specific training and awareness raising to procuring entities, Ministry of Finance, and other concerned stakeholders.

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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