

Influence of formal and informal institutions on outsourcing public construction projects in Uganda

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Abstract

This thesis examines how the process of outsourcing of public construction projects is influenced by institutions and why. Extant literature largely focuses on explaining how outsourcing through competition improves efficiency *vis a vis* in-house sourcing. Little is available on how institutions actually influence the outsourcing process of construction projects and why results differ from one socio-political context to the other especially in developing countries. The thesis develops an analytical framework for process-tracing that integrates institutional and social capital theories to examine what have hitherto been disparately employed to study their influence in policy reform implementation. By integrating them, the framework enabled analysis of actors' decision making in outsourcing process based on plural rationality at central and local government (hereafter LG) contexts. Applying this approach to public procurement reforms in Uganda that privileges outsourcing of construction projects, the thesis argues that actors in private and public sectors simultaneously pursue material gains as well as social capital investments while trying to minimise their transaction costs that leads to 'forum shopping' between formal and informal institutions. Depending on the degree of social embeddedness, the process of outsourcing will incline to formality or informality. Findings indicate that informal arrangements tend to dominate the process of outsourcing in Uganda more than the formal institutions in place. The study did not find any major difference in informal practices at both the central and local government levels although central governments tend to appear to prefer formal institutions in their decision making. The thesis therefore suggests that promulgation of laws and formal regulations should take cognisance of informal institutions as well as social structure in their design.

Dedication

“We are in the position of a little child entering a huge library filled with books in many languages. The child knows someone must have written those books. It does not know how...”

Albert Einstein
on the existence of God

This study is dedicated to my late father, **Mr. George William Kamanyire Akiiki**, who through meagre income from a job of a public construction supervisor (Road Overseer) sacrificed to educate me from among his over 30 children,
May his soul rest in eternal peace!

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Juggling work and study on one hand and Kampala and Birmingham on the other in a 'split location' study was an experience in which I needed to rely heavily on others for many things. Without reciprocal support in equal, sometimes pleasantly and surprising more than I thought deserved, I would not have been able to complete this study. I am therefore heavily indebted to all those who have been of such great help. First, I acknowledge the untiring support and encouragement offered by my Supervisor Professor Paul Barrie Jackson. Thank you for your patience and understanding. Professor Richard Batley and Mr. Simon Delay, thank you for your guidance, it was enriching. It would be 'remiss' if I did not acknowledge the sacrifice of my family for their understanding. Thank you Mrs. Rosemary Kugonza, Moses, Joshua, Janet and Ruth, you are an inspiration. In the same vein, I thank you Dr. Sam M. Kayaga for your sustained encouragement to start PhD studies and moral support to stay the course. Lastly, but not least, my gratitude goes to Uganda Management Institute (UMI) leadership and staff for the financial and other support that facilitated my studies.

CHAPTER FIVE: INSTTTUTIONAL ENVIRONMENT IN UGANDA -EVIDENCE FROM THE FIELD	151
5.1 Introduction.....	151
5.2 Governmental framework and its environment	152
5.3 Public construction: evolution of buy option in Uganda	178
5.4 Summary and conclusion.....	188
CHAPTER SIX: INSTITUTIONS AND <i>EXT ANTE</i> CONTRACT AWARD.....	190
6.1 Introduction.....	190
6.2 Selection and design of construction projects: applicable laws.....	191
6.3 Applicable law to pre-source selection sub-processes.....	196
6.4 Institutions and award of contract phase.....	199
6.5 Summary of the chapter	233
CHAPTER SEVEN: INSTITUTIONS AND <i>EXT POST</i> CONTRACT AWARD.....	237
7.1 Introduction.....	237
7.2 Applicable Law <i>ex-post</i> contract management.....	238
7.3 Institutions actually influencing contract management: Central government level.....	240
7.4 Institutions actually influencing contract management: LG level	248
7.5 Institutions actually preferred for contract enforcement and dispute resolution	256
7.6 Summary of the chapter	265
CHAPTER EIGHT: PROCLIVITY OF PUBLIC CONSTRUCTION PROJECTS TO INFORMALITY	269
8.1 Introduction.....	269
8.2 Summary of proposition and questions.....	269
8.3 Findings and conclusions	271
8.4 Contribution to current state of knowledge.....	279
8.5 Delimitations and future avenues for research.....	282
8.6 Policy implications.....	284
BIBLIOGRAPHY	287
APPENDICES:	
Appendix 1(a):	Letters of introduction from University of Birmingham (UoB) and Uganda Management Institute (UMI)
Appendix 1(b):	Uganda Management Institute (UMI)
Appendix 2:	Research instruments
Appendix 3:	Construction project complexity and level of risk model
Appendix 4:	List of Interviewees by Designation
Appendix 5:	Hierarchy of local government system in Uganda
Appendix 6:	Districts of Uganda

List of Figures

Figure 1.1	Structure of the thesis and relations among chapters	14
Figure 2.1	Hierarchy of Institutions and the relationship with social capital	19
Figure 2.2	Kinds of institutions	23
Figure 2.3	Different conceptions of institutions	26
Figure 2.4	Nexus of transaction characteristics and governance structures	53
Figure 2.5	Social structural sites for social capital generation	67
Figure 3.1	Increasing complexity of projects and risk level	81
Figure 3.2	Government client structure in public service delivery	87
Figure 3.3	Public sector construction project cycle	91
Figure 3.4	Implementation of construction project	97
Figure 4.1	Analytical framework	105
Figure 4.2	Relationships among domain of events	123
Figure 5.1	Hierarchy of national planning process	162
Figure 5.2	Linkage between project cycle and national planning in Uganda	165
Figure 5.3	Responsibilities in the procurement cycle	182
Figure 6.1	Key PDE actor relationships and flow of information in central government	200

List of Tables

Table 2.1	Dimensions of institutions	31
Table 2.2	Formal informal paradigm	37
Table 4.1	Basic types of designs for case studies	114
Table 4.2	Respondents in pilot study	127
Table 4.3	Categories and number of informants	132
Table 4.4	Documents collected and reviewed	135
Table 5.1	Administrative units in Uganda	156
Table 5.2	Procurement entities with contracting capacity	157
Table 5.3	Overview of Uganda's Annual Budgeting process	168
Table 5.4	Composition of Local Government revenue	170
Table 5.5	A survey of key steps in planning and implementation process at LG level	176
Table 5.6	Summary of journal rules, their source and regulator	186
Table 6.1	Type of funding and formal rules actually applied	212
Table 6.2	Formally and level of complexity of project	213
Table 6.3	Actual criteria used to award contracts at LG	226
Table 7.1	Type of firm and project manager	243
Table 7.2	Contract types and preferred enforcement mechanisms	257
Table 7.3	Common disputes in construction projects	259

List of Abbreviations

ABS	Australian Bureau of Statistics
AfDB	African Development Bank
AG	Auditor General
AO	Accounting Officer
BFP	Budget Framework Paper
BOQ	Bills Of Quantities
BOT	Build Operate and Transfer
CA	Crown Agents
CAO	Chief Administrative Officer
CC	Contracts Committee
CCs	Contracts Committees
CDF	Comprehensive Development Framework
CIDB	Construction Industry Board
CG	Central Government
CIPS	Chartered Institute of Purchasing and Supply
CNO	Collaborative Networked Organisations
CO	Colonial Office
CS	Central Stores
CSOs	Civil Society Organisations
CT	Competitive Tendering
CTB	Central Tender Board
CV	Curriculum Vitae
DDP	District Development Plans
DEC	District Executive Committee
DEO	District Education Officer
DSC	District Service Commission
DTB	District Tender Boards
DTPC	District Technical Planning Committee
FDS	Fiscal Decentralization Strategy
FGD	Focus Group Discussion
FIDIC	<i>Fédération Internationale Des Ingénieurs-Conseils</i>
FY	Fiscal Year
GCC	General Conditions of Contract
GDP	Gross Domestic Product
GoU	Government of the Republic of Uganda
IASIA	International Association of Schools and Institutes of Administration
IGG	Inspector General of Government
IPF	Indicative Planning Figures
LC	Local Council
LG	Local Government
LGs	Local Governments
LGA	Local Government Act
LGDP	Local Government Development Programme
LGFC	Local Government Finance Commission
LGS	Local Government Statute
LLGs	Lower Local Governments
LRA	Lord's Resistance Army
MD	Managing Director
MDI	Management Development Institute
MoFPED	Ministry of Finance, Planning and Economic Development

MoW&H	Ministry of Works and Housing
MNC	Multi National Corporations
MTEF	Medium Term Expenditure Framework
NASPO	National Association of State Procurement Officials
NGO	Non Governmental Organisation
NGOs	Non Governmental Organisations
NPA	National Planning Authority
NPM	New Public Management
NRM	National Resistance Movement
OECD	Organization for Economic Co-operation and Development
OGC	Office of Government Commerce
ONS	Office for National Statistics
PAF	Poverty Alleviation Fund
PDE	Procurement and Disposal Entity
PDU	Procurement and Disposal Unit
PEAP	Poverty Eradication Action Plan
PhD	Doctor of Philosophy
PMC	Project Management Committee
PMI	Project Management Institute
PPDA	Public Procurement and Disposal of Public Assets
PRSP	Poverty Reduction Strategy Papers
PS	Permanent Secretary
PSC	Project Steering Committee
PWD	Public Works Department
RCs	Resistance Councils
RDC	Resident District Commissioner
SSI	Semi Structured Interviews
SWG	Sector Working Groups
TC	Transaction Costs
TCE	Transaction Cost Economies
TSU	Technical Support Units
UIPE	Uganda Institute of Professional Engineers
UK	United Kingdom
UMI	Uganda Management Institute
UNABCEC	Uganda National Association of Building and Civil Engineering Contractors
UNDP	United Nations Development Programme
UNICEF	United Nations International Children Emergency Fund
UN-ESC	United Nations-Economic and Social Council
UPE	Universal Primary Education
WB	World Bank
WDR	World Development Report

CHAPTER ONE: INTRODUCTION

1.1 Background to the study

Having worked as an administrator of a donor funded development programme in a local government (LG) and later as a national coordinator of a sectoral development programme in Uganda, the author became interested in what it was that made differences for successful projects implementation in different districts and ministries. In particular, the interest was on outsourced construction projects that always dominated the budgets of the programmes but were also a challenge to execute successfully. The author was able to discuss this question later with his students at the Uganda Management Institute (UMI) some of whom are managers of projects both in local and central governments. The same issue was a topic of discussion with several academic colleagues and project managers from private sector companies who shared the author's views and were equally interested in what always appears a paradox that a similar project is successfully implemented in one area and fails in another despite all efforts. The author concluded that for a successful implementation of outsourced construction projects or programmes, one needed full understanding of contextual factors that caused variations.

Arising from the discussions held with students, colleagues, and various public, private, and non-governmental (NGO) officials, there was a general feeling that pointed to problems related to people's beliefs, attitudes towards government work, expectations, culture, education level of politicians, corruption, ethnic or tribal backwardness and others falling along those lines of reasoning. We wanted to pinpoint the actual problem, but there was no consensus on what it is and how to go about finding out and where to start. The researcher embarked on literature search for answers.

Preliminary review of the literature

In seeking to explain mixed results¹ in public sector outsourcing, the study reviewed international literature on the contemporary issue of outsourcing in general and of construction projects in particular. It is the works of Douglass North and particularly his Nobel Prize lecture, which drew the researcher's attention to institutions;

Institutions ...structure human interaction. They are made up of formal constraints..., informal constraints (norms of behavior, conventions, and self imposed codes of conduct), and their enforcement characteristics. Together they define the incentive structure of societies and specifically economies. The organizations that come into existence will reflect the opportunities provided by the institutional matrix...if the institutional framework rewards *piracy* then *piratical* organizations will come into existence; and if the institutional framework rewards *productive* activities then organizations - firms - will come into existence to engage in *productive* activities (ibid: 1993, p2) [emphasis added]

A further survey of literature revealed that institutions can be formal or informal and both types of institutions can be influential in human behaviour (North, 1990; Coriat and Dosi, 2002; World Bank 2003). Additional examination of literature aimed to tease out the influence of institutions on the process of public sector outsourcing of construction projects.

No agreement on nature of benefits from outsourcing

Outsourcing, which is a competitive acquisition of goods and services from outside the performing entity instead of in-house provision (Domerger, 1997; Jensen and Stonecash, 2005), represents a well-established mechanism for government service provision in all developed countries and is a standard prescription by International Finance Institutions and other donors to poor countries. However, there is relatively little agreement about its benefits in various contexts. Jensen and Stonecash (2005:p.767) aver that: "Despite a great deal of practical experience by governments at all levels, in many countries, there is still relatively little agreement about whether outsourcing is uniformly beneficial..." Instead, literature points to mixed results of public sector outsourcing variously attributed to the nature of the service and its market conditions, the public values, and the institutions within which

¹ Lack of consistence in construction projects performances

outsourcing is embedded (Domberger, 1997; Savas, 1977; Potoski and Van Slyke, 2007; Batley and Larbi 2004). Outsourcing, De Hoog (2006:2) argues, "...in many environments can be a messy, confusing, and conflictual process fraught with opportunism, both political and financial". Other scholars, Sahlin-Anderson (2003); Turner (2002); Christensen (1998); and Jensen and Stonecash (2005) have recommended that in order to succeed with outsourcing, implementation should reflect individual country circumstances and various layers of government.

This study, as stated in the background, was born out of an interest in understanding how institutions interact to affect construction projects undertaken through public sector outsourcing in a developing country context. The aim is to obtain understanding of why and how institutions influence outsourcing of construction projects generally. Individual projects are not units of analysis in this study as will be elaborated in chapter four. The study explores the dynamics of decision making by policy actors, contractors and stakeholders, in the process of outsourcing of construction projects; and why it produces mixed results. Analysis of the influence of institutions on outsourcing is not just about how the behaviour of politicians, bureaucrats and contractors are affected but also why institutions influence the total process of outsourcing of physical infrastructure. According to Jensen and Stonecash (2005:p768) there is no generalisable theory of outsourcing in existence, "...success of each outsourcing exercise depends on the specific characteristics of a particular service environment". Some literature (OECD, 1993; Bailey 1999; and Pollitt and Bouchaert, 2000) has pointed to many barriers and negative impacts concerned with outsourcing and how its conduct may vary across circumstances (Brown, Potoski and Van Slyke, 2007). Thus, the fact that a global policy instrument such as outsourcing yields varying results under different environments relates to this study.

Institutions matter in public sector outsourcing

Outsourcing transactions occur within specific institutional framework born out of public policy reforms pursued in given country contexts (Klein, 1999). Public sector reforms of the last twenty five years have been inspired by neoclassical thinking; particularly public choice theory, which prescribe that generally, competition and marketing approaches improve efficiency, effectiveness and responsiveness of the public sector. Based on this neoclassical thinking, many developed and developing countries adopted public sector reforms (Avenett and Hoekman, 2005, Mbaku, 2004; Batley and Larbi, 2004; Hughes, 2003; and Walsh, 1994). However, the assumption of pure rationality on which neoclassic decision makers hinge their argument, has been disputed and increasingly counsel has been found in Simon's reasoning.

If...we accept the proposition that both the knowledge and the computational power of the decision maker are severely limited, then we must distinguish between the real world and the actor's perception of it and reasoning about it. That is to say we must construct a theory...Our theory must include not only the reasoning processes but also the processes that generated the actor's subjective representation of the decision problem, his or her frame (ibid: 1986, pgs 210-11).

Extant literature along Simon's logic suggests that (i) decision makers experience bounded (constrained) rationality attributed to institutions, both formal and informal, that may limit information acquisition and utilisation; and (ii) that resultant decisions do not necessarily maximise economic returns (Raynaud 2000; Dequench 2005). However, what is not clear is the extent to which actors actually prioritise economic returns over other forms of returns in their decision making. For example, Aoki (2008) has argued that actors' computations of returns in their rationality extend beyond economic and include social prizes but does not establish to what extent this is important and under what circumstances. This study, in line with Richter (2008) brackets-in social considerations (i.e. social capital) as a significant element that enters into the computations of many actors as part of both the costs and benefits of many decision makers in certain contexts among others to gain certain information and other benefits such as the trust of others.

1.2 Ugandan context

In developing countries such as Uganda, a combination of external and internal factors, which include growing financial crises, donor pressure, rapid population growth, and endemic corruption triggered public sector reforms (Kiiza, 2005; Larbi 1999; Batley, 1996; Saxena 1996; Agaba and Shipman, 2009). As a remedy, market-type solutions and values of entrepreneurial managerialism were introduced into the public sector. In many instances, government functions were transferred to private and voluntary sectors ushering in plurality in service delivery. Services such as physical infrastructure construction of roads, classrooms, toilets and teachers' houses, health centres and water supply facilities among others have been outsourced at both local and central government levels. Competitive Tendering (CT) was adopted after the promulgation of the Local Government Statute (LGS) of 1993. This statute was later amended by Parliament into the Local Government Act, 1997 that devolved many central government functions to district local governments. The LGA has since been reinforced by other laws like the Public Procurement and Disposal of Public Assets (PPDA) Act 2003 under which framework outsourcing occurs, and the accompanying procurement regulations and guidelines, all of which stress competition, value for money, transparency, non-discriminatory, impartiality, independence of actors, and accountability (Uganda, PPDA 2003; Avenett and Hoekman, 2005). But how have the reforms which ushered in the policy of outsourcing public infrastructure delivery played out in practice and why?

1.3 Statement of research problem

Despite government reforms articulated in the legal provisions, regulations, and guidelines aimed at improving service delivery system through public sector procurement, the outcomes of the process of outsourcing physical infrastructure construction projects has been mixed in Uganda. Results of government efforts to eliminate factor price distortions for efficiency gains and improve quality through competitive strategies are unclear; and the extent to which

both formal and informal institutions are influential in outsourcing transactions of physical infrastructure is indistinct, yet this area requires urgent attention because of its potential contribution to poverty reduction.

The president of Uganda has on many occasions queried the continuous escalation of construction costs in spite of reforms for increased competition (*The Daily Monitor* May 14th, 2008) “According to the figures analysed for the president, in 2000, for example the cost ...was \$234,000 per kilometre, and ...in 2006...US\$ 880,000 per kilometre” (ibid). Costs had tripled. The press has also reported many cases of incomplete physical infrastructure projects, structures collapsing soon after commissioning and hundreds of procurement related complaints to the Inspectorate of Government (IGG), and to Parliament of Uganda (*The New Vision* [10 November, 2003; 23 July 2008, 1 April 2009, *The Monitor* [25 November 2002, 12 May 2008, 14 May 2008, *All News* [10 December 2002]). The empirical key question is to what extent institutions account for these outcomes and why? And corollary questions are; How are actors (transactors) behaviours affected by the institutions and which type of institutions? What do actors’ take into consideration in analysis of costs and benefits in the process of outsourcing decisions in Uganda?

Whereas a lot of literature has been dedicated to explaining how outsourcing through competition improves efficiency *vis a vis* in-house sourcing, little is available on how *actually* institutions influence the process of outsourcing of construction projects and why results differ from one socio-political context to the other especially in developing countries². One important context that affects such reforms is at the points of service delivery (micro context) referred to in this thesis as the ‘street-level’ context. There is a limited amount of empirical research undertaken at this local level. Instead a lot of the literature on competitive market approaches relates to the OECD countries (Sahlin-Anderson, 2003; Larbi, 1998) which have

² Most reports on NPM reform processes either concern one country or are structured as comparisons between countries. Such studies explain variations in outcomes from country to country but additional layers of explanations should be considered (Sahlin-Anderson 2003).

similar background and therefore arguments are confined in a narrow institutional environment and cannot be easily transferred to other different contexts. Where the literature refers to developing countries, the focus has tended to be on national (macro) differences in constitutional and legal frameworks, polity characteristics, and administrative culture, economic and political influences (Walsh, 1995; Olsen and Peters, 1996; Kicker, 1997; Sandfort, 2000; Pierson, 2000). Others draw comparisons between countries or sectors in order to be able to explain how this context explains the outcomes of the reforms (Sahlin-Anderson, 2003).

Recent public management reform studies in Uganda have highlighted the tensions between central government bureaucrats who want to design and construct ‘state of the art’ schools, water points, health facilities and roads (outputs) in the shortest possible time and the desired outcome of strengthened local governance institutions and systems (Onya-Olaa, 2003; Richards and Smith, 2005). Other studies have focused on institutional reforms mainly at the macro level of analysis (Michinson, 2003; Kiiza, 1997, 2000; Byaruhanga, 2002). These commentators on institutional reforms in Uganda have not focused on the influence of the institutional environment on the process of outsourcing construction projects especially how institutions interact to influence the process. This gap in literature requires empirical studies to fill.

Sector studies, such as in education, have concentrated on the relevance, quality, access, and equity of the education service itself. Where non-pedagogical issues have been studied, they have focused on inputs such as the extent of local capture of central government transfer of capitation grants intended for government-aided schools (Reinikka and Swensson, 2004). Those studies have not focused on the institutional issues generally and at the ‘street-level’

layer³ of service delivery and are mute on the influences of institutions on the process of outsourcing infrastructure services.

Where some literature has focused on construction and other infrastructure studies, it has tended to concentrate on the construction and project management of private construction firms. In case studies of public sector outsourcing for construction services, it is rare to find studies that actively combine understandings and theoretical perspectives of the public part with due consideration of the private sector (Berggren, *et al.*, 2001). In this connection, Koch and Buser (2006:p549) have observed; “It is characteristic that the two perspectives rarely use each other’s results, at least judged by the material known to the authors.”

Leiringer (2003) in accord with this view notes that construction projects tend to get trapped in the classical problems on whether to research “for” or “on” the sector, viewing public sector outsourcing merely as a market for building projects and the implicit simplification of the public sector as merely a place for client organizations. This study attempts to combine public policy implementation research and construction projects management under public sector outsourcing arrangements using institutional and social capital theories as major tools of analysis. The idea is that public sector outsourcing of construction projects is dependent on actors’ behaviour which is in turn influenced by institutions and social capital considerations. Formal and informal institutions matter in the process of public sector outsourcing whether at the central government or local government levels.

A number of scholars have also observed that context matters, but that it matters most in respect of the time, place and type of service (Lipsky, 1980; Keiser, 1999, Hill, 2003; WDR, 2004; McGregor, 2004; Meier, 1989; Palumbo, 1988; Palumbo and Calista, 1987). This context specificity of institutions needs to be understood as part of the larger institutional

³ Sahalin-Anderson (2003) argues “....while NPM as a trend which can be described as nationally, internationally and trans-nationally formed, most explanations found in literature are nationally based. This disproportionate focus on national settings may miss some of the more fundamental dynamism of reform processes. Hence...argument for those additional layers of explanations should be considered.

environment in order to explain outcomes of public sector outsourcing. Each context has unique community institutions, cultural norms, values and social capital. In addition, each context has to function within a certain local government, central government policies and general politics. For public management reform approaches to succeed, they need to be well adapted to local “social and cultural norms, providing a reasonable fit between formal and informal structures of power” (WDR, 2004: p59) at the same time taking into account the macro and international context (McGregor, 2004).

This study posits that institutions matter in construction projects. The rules of the game, both formal and informal including institutional arrangements, facilitate or constrain the actions of decision makers in outsourcing transactions producing mixed results; but how and why.

1.4 Focus of the Study

The study analysed the role of institutions in the process of outsourcing construction projects in Uganda. Many studies have previously focused on the efficiency benefits in terms of cost savings arising from outsourcing while others investigated effects of outsourcing on public accountability and equity. This particular study examines how and why institutions influence outsourcing of public construction projects in a specific developing country: Uganda.

In this study, the focus is on the institutions as they influence *ex ante* contract; contracting and *ex post* contract of the process of outsourcing public construction projects. The extent of the influence of institutions on the outsourcing process and their interactions with social capital formed the core of the case study. The study notes that inter-institutional interaction occurs whereby “...governance institutions influence each others’ normative development and effectiveness” (Gerhring and Oberthur, 2006: p2).

The specific context of the study starts in 1997 when the Local Government Act, 1997 was enacted. The Act provided for outsourcing of most LG services including all physical

infrastructure construction except non-decentralised services like the construction of trunk roads, which were retained by the CG. In 1998, Government of the Republic of Uganda (GoU) adopted outsourcing of construction works as a national policy although it had been undertaken on occasions before whenever it was found necessary. This study focused on the period 1997-2008 over which outsourcing has been a key policy instrument for public construction service delivery.

Two main theories are deployed in this study; (1) Institutional theory, and (2) social capital theory. Each theory has strands used in this study as elaborated in the literature review chapters two and three, while in chapter four the discussion turns to the analytical framework gleaned from the theories.

The study was limited to outsourcing physical infrastructure construction projects under contract through competitive bidding. It recognises that missing in the literature on outsourcing is an account of how institutions influence the process of outsourcing of construction projects. Most authors tend to concentrate on advice for managing contracts and there tends to be a void for "...how *the market* [institutions] influences contract management, and consequently, they end up sounding a lot like all the prescriptions for managing service delivery [fall] within government agencies." (Brown and Potski, 2004: p657). Yet there are issues related to interagency transactions and with contractors' organisations.

The study also recognises the limitations of past tendencies which mainly focused on managing the opportunistic behaviour of agents (contractors) using the transaction cost and agency theories giving less attention to principals. Berggren, *et al.*, (2001: p40) affirmatively states: "There is much less interest in studying opportunistic behaviour on the customer side." The agency theory tends to centre on the handling of the risk of opportunistic behaviour by the agent as if he/she is the only one supposed to act. Yet as Berggren, *et al.*, (2001) further observe, in projects such as construction, the principal (client) also is a key actor in the project

in both *ex ante* and *ex post* contract award. The client performs *ex ante* planning, solicits for bids, evaluates bids, and undertakes decisions to award contracts. During *ex post*, the principal supplies key information, making decisions about interfaces between contractors during the execution phase, and so forth. One can conclude that there is also a risk of opportunistic behaviour on the part of the client, which the literature has tended to downplay. Moreover, outsourcing contracts have been presented as dyads whereas many project situations in physical infrastructure construction projects in a developing country setting, are more than dyads as transactions involve more than two actors, making problems of control, cooperation, and opportunism substantially more difficult. Therefore, a body of knowledge on construction project management will be used in addition to public management literature.

Thus, the study contributes to the theoretical discussions and existing knowledge on how institutions influence policy implementation particularly at the interface of service delivery. It examines empirically, the links between macro policy and micro service delivery in Uganda. The study attempted to answer questions, which are important in explaining the influence of institutions and social capital in policy implementation through outsourcing arrangements, but existing literature has not adequately addressed particularly linking institutions, social capital and outsourcing into an integrated analytical framework to examine construction projects.

1.5 Research aim, questions and hypotheses

This section spells out the general and specific objectives and the research questions that have guided this study.

1.5.1 General and specific objectives

The research divides objectives into general and specific objectives as given below

The general objective of this study was to explain the influence of institutions in the process of outsourcing public construction projects in Uganda.

Specifically, the study sought to:

- (a) Analytically investigate why and how do institutions influence outsourcing of construction projects in Uganda?
- (b) Examine the institution types that actually affect the enforcement of contracts in outsourced construction projects in Uganda
- (c) Explain the nature and pattern of interaction between institutions (formal and informal) and amongst social capital in outsourcing of construction projects.

1.5.2 Research Questions

The main research question is; “Why and how do institutions influence the process of outsourcing public construction projects in Uganda?”

There are three sub questions:

- 1) Why and how are actors’ decisions influenced by institutions in the outsourcing process in Uganda?
2. Which types of institution(s) are actually preferred in enforcement of formal contracts in outsourced construction projects in Uganda and why?
3. How do institutions (formal/informal) and social capital interact to influence outsourcing of construction projects and why?
 - a. What is the nature and pattern of interaction between formal and informal institutions in outsourcing of construction projects
 - b. How do institutions and social capital interact in outsourcing process of construction projects?
 - c. Why do consequences of interaction of institutions and social capital differ within space and time?

1.5.3 Hypotheses

The research hypotheses for the study arose from the review of literature on institutional and social capital theories as well as of outsourcing of construction project management (see chapters 2 and 3) following experiential puzzlement of the researcher while working with development projects. The hypotheses link to the above research questions and are examined using the case of Uganda. They are:

Hypothesis 1

Informal institutions are more likely to influence the process of public sector outsourcing of construction projects at the local government level more than at the central government level due to the nature of social bonding (bonding social capital) experienced by actors at the local government level.

Hypothesis 2

Social capital costs and benefits enter rational calculations of actors in outsourcing process of construction projects in addition to constraints and opportunities presented by the formal institutions mainly, but also the formal-informal interactions of institutions.

Hypothesis 3

A corollary proposition is that; *formal institutions are more likely to influence the process of public sector outsourcing of construction projects at the central government level more than at the local government level due to perceived lower transaction costs of using third-party contract enforcement.*

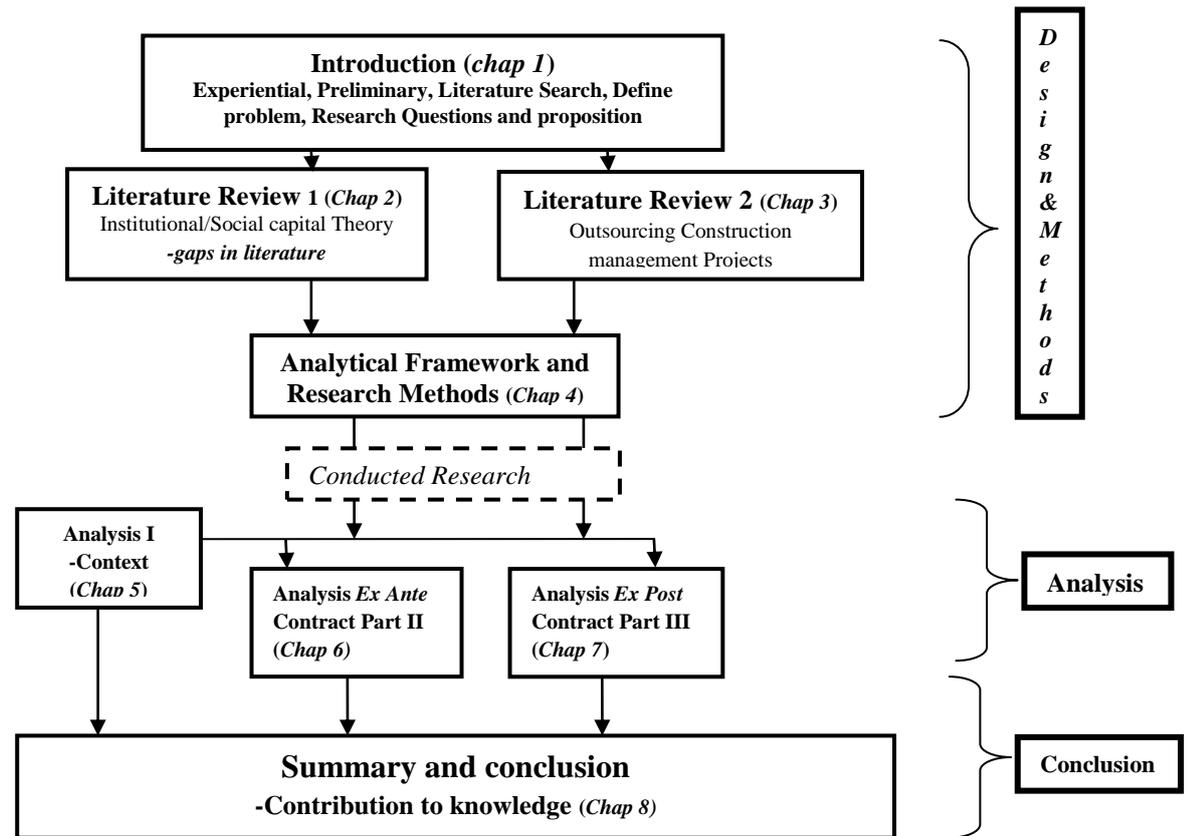
1.6 Relevance of the Study

This research adds to the debate and existing knowledge in the area of policy making and implementation, particularly in service delivery through outsourcing of public works. Procurement and construction project management professionals can hope to benefit through design of appropriate governance structures to influence the quality of service delivery. The study sheds more light on the ‘street-level’ of public construction projects. It makes a contribution to theoretical understanding of project management generally, in particular benefits the emerging stream of research which takes a closer look at projects from a theoretical perspective in an attempt to answer the “how and why” questions about project management and temporary organisations, moving away from traditional views of projects as a mere operational phenomenon (Walker, 1999; Winch, 2006).

1.7 The Structure of the thesis

The thesis has been structured into eight chapters with three major parts. **Part I**, which covers introduction and literature review, has four chapters one to four; **part two**, which covers analysis, has three chapters five to seven, and **part III** covers *summary, conclusion* including *contribution to knowledge*, as the eight chapter.

Figure 1.1: Structure of the thesis and relations among chapters



Chapter one is the introduction. It contains the problem context, focus of study, research aim and questions; and outlines the rest of the thesis. The chapter spells out the central proposition of the thesis that a mix of formal and informal institutions influences construction projects differently from one level of government to the other. It predicts that informal institutions are likely to influence the process of public sector outsourcing more at the LG level than at the CG level due to differences in bonding social capital among actors at these two levels of government.

Chapters two and **three** present relevant literature and establish knowledge gaps. Chapter two begins with an overview of institutional theory and framework before defining the key concepts. It argues that institutions matter in actors' decision making just as activities of actors matter in evolution of institutions. The theory assumes rationality but one that is bounded and expands actors' utility beyond material net gain to propose modelling social

costs and benefits in actors' economic transactions. The later part of the chapter focuses on social capital theory, and its import to public policy analysis highlighting its dimensions and possible moderating role in actors' behaviour. The contract, as both a legal and social artefact, is discussed.

Chapter three examines outsourcing of construction project management and establishes further knowledge gaps in the application of institutional and social capital theory in public construction sector. The importance of construction industry and its many actors is analysed. It is argued that because both institutions and social capital matter, their interplay in various locations is an empirical question.

Chapter four explains the research methodology and analytical framework used for the study. It justifies why a case study with an interpretive qualitative approach using process-tracing was the most appropriate research methodology for the study. The chapter points out shortcomings of the methodology.

Chapter five considers the case of Uganda using a mixture of evidence from the field and document reviews. It traces the historical developments in the country including evolution of construction management. The chapter explains the process of national planning including how it leads to identification and selection of construction projects.

Chapters six and seven adduce further evidence from the field through analysis. Chapter six examines the process after project selection - design, specification, and sourcing of contractors including contract award. In chapter seven, analysis turns to processes that follow award of a contract by the client organisation and examines institutions influencing contract administration including events leading to contract closeout.

The concluding **chapter eight** summarises the findings, draws conclusions, and highlights the contributions of the research to knowledge including areas for further inquiry and policy

implications. In general, the chapter demonstrates that adherence to formal institutions is more than compliance on paper with formal procedures by appropriate organs of procurement entities in outsourcing of public construction projects. The argument of the thesis is spelt out that trust and informal links can be more important than formal rules, formal organisational structures, and procedures in outsourcing of public sector construction projects in contexts where bonding social capital predominates. Dominance of a formal or informal institutional regime is dependent on perceived net utility gain that includes social capital considerations by actors involved and an informal regime is generally preferred over a formal one in Uganda. This argument contributes to current knowledge regarding enforcement of formal rules in public sector outsourcing of construction projects in Uganda.

CHAPTER TWO:

INSTITUTIONS AND OTHER TRANSACTIONAL COST-BENEFITS

...macro-theories are typically empirical generalisations in need of causal explanation in terms of individuals and their interactions... (Mill, J.S. [1843-1872])

=====

2.1 Introduction

The chapter's aims are two-fold. The first is to review existing literature on institutions and social capital regarding why and how they influence outcomes of economic transactions through their effect on individual decision making and actions. Secondly, the chapter aims to point out gaps in the current state of knowledge, some of which this thesis attempts to fill in. Section 2.2 introduces the emergency of research on institutions and social capital as variables in explaining differences in policy reform implementation. Section 2.3 discusses the theoretical foundations of the study as section 2.4 ventures into institutions as an explanation for human action. Patterns of formal and informal institutional interaction and nature and pattern of interaction of institutions are discussed in sections 2.5 and 2.6 respectively. Actors' preferences of institutional types are discussed in section 2.7 while 2.8 seeks to integrate two theoretical approaches in policy implementation analysis –*institutions* and *social capital* as mediated by *transaction costs* and *benefits* into a *conceptual framework*. Section 2.9 points out that parallel to formal economic contracts auxiliary non-economic contracts may be entered and have effect on the former. Lastly, section 2.10 concludes the chapter.

2.2 An overview of institutions and social capital in policy reforms

Over the past 20 years, the search to explain differing performances of economies across space and time have increasingly incorporated institutions as a key ingredient. This approach has gained wide application including explaining effectiveness of policy reform implementation or rather the lack of it, both in developed and developing countries. Beginning with the publication of North's seminal book, *Institutions, Institutional Change and Economic Performance* (1990) there has been burgeoning research projects focussing on

institutions and their roles in economic transactions, good governance, social policy reforms and others. However, while the notion that institutions matter, mainly through their constraints on human behaviour (by raising or lowering transaction costs); nonetheless, *how* people *actually* interact with each other also counts significantly in the functioning and development of society. Consensus is emerging that people's interaction (work, interchange, trust, distrust) in a given context, conceptualised as social capital, together with institutions, influence individual and collective decisions (Gratnovetter, 1985; Standifird and Marshal, 2000; World Bank, 2003; Tsai, 2006; Krug and Hendrischke, 2008; Styhre, 2008).

Research on the influence of institutions and social capital in public management however, has tended to emerge from two distinct fields as if there were an actual disconnect in practice (Dasgupta and Sarageldin, 2000; Farole, Rodriguez-Pose, and Storper, 2007; Ahlerup, *et al.*, 2009). Yet in *reality*, both social capital and institutions inhere in the structure of relations (social structures) among actors (Coleman, 1998; World Bank, 2003; Styhre, 2008) and "...policies that read well often come to naught... [because] there is mutual influence..." (Dasgupta and Sarageldin, 2000: px). It is argued in this chapter that because of synergetic effect of social capital and institutions, actors' utility function and therefore their behaviours/actions are influenced in public policy implementation to yield mixed outcomes. It is noteworthy also that, the conceptualisations of the duo (institutions and social capital) has often shifted threatening to encompass either too much or too little therefore risking explaining nothing (Grootaert and van Bastelaer, 2002). The next section presents a framework to explain a hierarchy of institutions and their relationship with social capital as basis for understanding how and why they affect human behaviour and actions.

2.3 Institutional Framework forming scaffolds and rinds

"The tradition of all the dead generations weighs like a nightmare on the brain of the living" Karl Marx

A survey of literature indicates that systems of institutions from various domains of society such as political, social, economic, and others constitute a jurisdiction; for example, a country.

Each domain has its dominant institutions, but these institutions do not operate in isolation (Pelling and High, 2005) as will be discussed further in section 2.5. They form an institutional framework of a society determining the incentive and constraints structure, protecting property rights, permitting some behaviour, and discouraging others but in a mutually constitutive manner. Neither actors nor institutional framework can be explained completely in terms of the other (World Bank, 2003; Hogson, 2007). Figure 2.1 depicts an institutional framework; and its linkage to social capital is also illustrated.

Figure 2.1: Hierarchy of Institutions and the relationship with social capital

Social Capital	Institutions			
	Informal	Institutional Levels	Formal	Organizations
Religious beliefs	Traditions, Taboos	Embeddedness	Constitutions	Courts
Norms		Institutional Environment: formal rules of the game-esp. property (<i>polity, judiciary, bureaucracy</i>)		
Shared values	Governance: play of the game esp. contract <i>(aligning governance structures with transactions)</i>		Laws	Civil society organizations
Trust		Rules		
Networks	Conventions		Government agencies	

Source: [Modified from World Bank (2003) and Williamson (2000)]

The figure, not drawn to scale, has two main columns; one representing *social capital* (left) and the other for *institutions* (right). The elements indicated in the column of social capital and elaborated later in the chapter; include *shared beliefs* such as religious ones, *shared values* like reciprocity, or *norms* (acceptable aggregated/valued patterns of behaviour). Other elements include *trust* and *social networks* that can be a product of interactions in a *market*, *hierarchy*, in a *community* or other social settings. These settings constitute a social structure that provides opportunities for repeated transactions.

Social structure form an essential part for social capital creation (cf figure 2.5) and in it is embedded social *norms* and other institutions. *Social networks* and other organisations, which form part of social structure, constitute a bridge that connects social capital and institutions (Putnam 1993; World Bank 2003); a phenomenon partially depicted in the figure (2.1) as thick arrows and dotted separators.

The second main column (of figure 2.1) is for *institutions* divided into four sub columns that symbolise *informal* and *formal rules*, *institutional levels* and a sub-column for *organisations*. Rules of the game and organisations are treated together as institutions in this study keeping in line with a broad definition of institutions discussed in the next section (2.4). While firms, governmental and civil society organisations/social networks are included as facets of institutions, they also constitute sites for *social capital* generation due to their role in providing opportunities (space and time) for social interaction. Norms, mutual understanding and trust can develop in the course of those interactions within the social structure.

This common relationship of institutions and social capital to *social structure* has often led to blurring of “...the distinction between the social capital and institutions...” (World Bank, 2003:p38); their intersection is elaborated upon in section 2.7.

The middle sub-column of *institutional levels* demonstrates that an institutional framework assumes a hierarchy with three levels. Rising from a *contract* in arbitrage, through '*institutional environment*' to the top level of "*societal embeddedness* of norms, customs, mores, traditions, etc... [r]eligion plays a large role at this level" (Williamson, 2000:p596). Social embeddedness is used here in reference to the fact that people are social beings whose attributes and actions are "conditioned by their location within networks of 'concrete, ongoing personal relations'" (Lewis and Chamlee-Wright, 2007:p107). Some authors have described social embeddedness as a "confusingly polyvalent concept" (Jessop, 2008: p337) encompassing all institutions in a hierarchical structure (Hultman 2004; Rooks, *et al*, 2000; Richter 2008). Three levels of embeddedness according to Jessop (2008) appear to clarify this hierarchy of institutions as: (1) interpersonal micro economic relations (networks of individuals), (2) institutional embeddedness (networks of inter-organisational relations), and (3) 'societal' embeddedness (economy as an organic part of society - intersystem linkages) within Palanyi tradition (Jessop, 2008:p337). So the dissection of *institutional levels* by the World Bank (2003) generally resonates with these levels of embeddedness. This implies that both actors and institutions are embedded in social structure of networks of social relations (Granovetter, 1985; Rooks, *et al* 2000, Hultman 2004; Jessop 2008; Hogson 2007). For the purpose of this discussion the apex is reserved for 'societal' level of embeddedness which is assumed to change very slowly "- on order of centuries or millennia" (Williamson, 2000) although in certain circumstances they have been found to change rather rapidly. The discussion returns to this point later in this chapter.

The second level in the hierarchy constitutes the *institutional environment* and includes formal rules such as constitutions, laws, and property rights which according to Williamson (2000:p598) are;

Constrained by the shadow of the past, the design instruments at Level 2 include the executive, legislative, judicial, and bureaucratic functions of government as well as the distribution of powers across different levels of government...The definition and enforcement of property rights and of contract laws are important features.

Thus, level two is referring to organs of the state including courts and police together with the regulations and court/case laws they establish. Norms are considered to belong to this level of institutional framework (World Bank, 2003). Because formal rules are enacted by the state, they are a window of opportunity for “first order [transaction cost] economising” to “get the formal rules of the game right” (Williamson, 2000:p598) so that transaction costs (discussed in 2.5) are minimised. The institutional environment provides a mixed menu of formal and informal institutional forces that impinge on the decision-making processes of actors. Which way the balance of forces tips an actor’s behaviour; is both a theoretical and empirical question of this study.

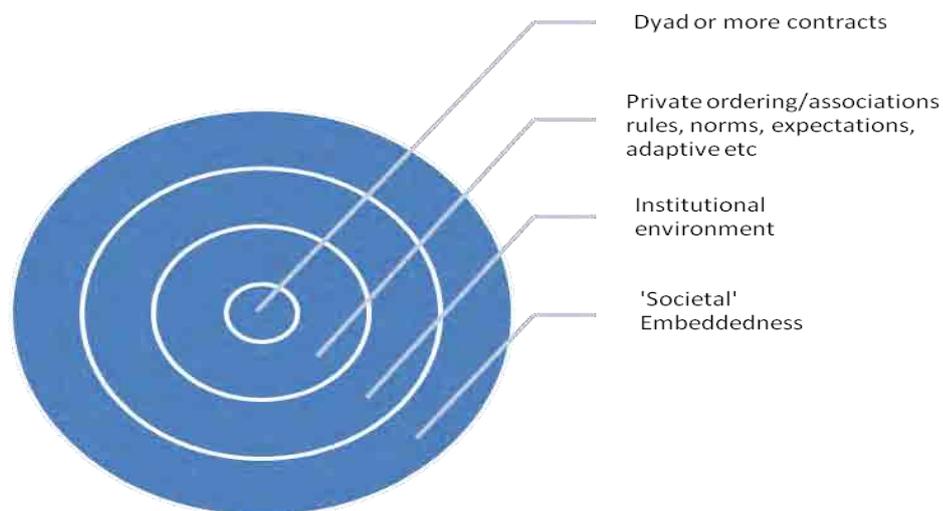
The third level is where the institutions of *governance* are located. “Get the governance structures right” and aligned with “transactions” is a dictum employed by economists as a second order of economising transaction costs (ibid: p598). This level becomes necessary because level one and two are too general to adequately regulate peculiarities of individual needs and various areas of arbitrage in which actors function. It may then become important to have bilateral or multi-lateral contracts or agreements customised to particular needs outside market relations. John R. Commons cited in Williamson (2000:p599) states “...the ultimate unit of activity...must contain in itself the three principles of conflict, mutuality, and order. This unit is a transaction.” Making contracts is a governance effort to “craft *order*, thereby to mitigate *conflict* and realise *mutual gains*” (ibid). However, making a contract document that caters for each bit in an agreement is very difficult in practice as Durkheim (1933) noted. I return to contracts later for a more detailed discussion.

Nonetheless, in terms of hierarchy of institutions, one can conceive a contract arrangement as a ‘descent on the rungs of a scaffold’ from societal embeddedness at the pinnacle through institutional environment to a contract. This conceptualisation resonates with the *multi-layered nested hierarchy* of institutions by Ostrom (2005) which distinguishes between

operational rules for day to day interactions, *collective-choice* ones for choosing operational rules, and *constitutional* rules for choosing collective-choice rules up to *meta-constitutional* rules and perhaps beyond to Thomas Hobbes’s “state of nature” or John Rawls’s “original position” cited in Granovetter (1985:p481).

While there is consensus in the extant literature on the first and second level institutions as collective and mandatory arrangements, Brousseau and Raymond (2006) have introduced an *intermediate* category of governance (private) institutions that partly incorporates elements of institutional environment (level two) in that they are *collective*, and elements of bilateral governance structure in that they are *voluntary*. “They are devices that *voluntarily* organise *collective* coordination and cooperation” (ibid: p2). In practice, private institutions correspond to “self-regulation *processes* ...” (ibid). Examples of such private institution include industry unions, merchant communities, professional (e.g. Engineers) or inter-professional associations (e.g. crop and animal farmers) and others. In this study, I adopt four levels of institutions in terms of hierarchy whose functional relationships are represented in Figure 2.2 below. The four-level conceptualisation appears to be more practical and takes care of institutions discussed in extant literature.

Figure 2.2: Rinds of institutions



Source: Gleaned from literature (World Bank, 2003; Hodgson, 2004; Ostrom, 2005)

The circles (rinds) in figure 2.2 above are like wrappings over each other. They represent the hierarchy of institutions cascading from the top level (1) of *embeddedness*, which is the outer most rind. This outer rind provides actors with minimal and generic coordinational solutions, which nonetheless are too general and incomplete to allow them to use resources and transact effectively, prompting governments to enact laws and regulations including the contract law. This forms the second rind or institutional environment.

However, the enacted laws and any conventions that develop though more specific, remain general and applicable to a range of heterogeneous (usually bilateral/dyadic) transactions requiring more specific inter-individual governance device, the *contract*. This innermost rind of dyads or more parties is legitimate when enacted within the dictates of the institutional environment. The rind for private orderings/institutions is usually devised in a *bottom-up* style of governance mechanism. The creation of level three (*private institutions*) sandwiched between institutional environment (level two) and bilateral contracts (level four) is inspired by several pairs of actors or agents who face similar coordination difficulties in spite of the devices of level two and four. Actors have an incentive to build collective devices aimed at gaining efficiency in overcoming this set of difficulties on a common basis. Private institutions come into being and survive, if they provide coordinational solutions that are cost effective in comparison to preferring higher institutions or solely relying on bilateral arrangements. Indeed, formation and strengthening of private institutions is often escalated by weak enforcement of institutions at the other levels. “Where markets do not function and government coordination does not work, private collaboration offers a high cooperation rent” (Krug and Hendrichke, 2008: p98). Actors then resort to private ordering mechanisms or ‘community responsibility system’ to enable large scale interpersonal transactions by setting up *voluntary* rules for *self-governance*. These may be among firms, or inter professional organisational groups, -associations. The associations may be for self-regulation in terms of

quality management, for building trust and mechanisms for orderly competition, dispute resolutions, security of property, or sometimes as a platform to bargain for resources and advocacy (Brousseau and Raynaud, 2006; Williamson, 1995; Hubbard, 1997). These layers of institutions constitute the institutional framework, architecture of institutions of a particular jurisdiction, such as a country.

The institutional scaffolds and rinds provide actors with a wide menu for some form of *forum shopping*⁴. The choice of institutions *actually* preferred, and why in a transaction; is a subject of this study as already pointed out. What informs these preferences? Why actors may prefer one institutional type against the other? How do interactions among institutions affect preferences of actors? These remain empirical questions of a *critical realist* (Mingers, 2004), a stance adopted by the researcher and elucidated in chapter four. The next section turns attention to the definition of institutions and their dimensions.

2.4 Institutions as an explanation for human behaviour and action

“Laws like cobwebs, entangle the weak, but are broken by the strong” Ascribed to Solon c575 B.C.

This section tackles the question of how institutions are defined and the nature of their influence on human action⁵. In order to explain institutional theory, a general understanding of institutions, their typology, interactions, and general attributes is necessary so that their influence on public sector outsourcing can be developed into a framework for analysis (chapter 4). It argued here that institutions whatever their definitions, are *devices by human beings* (excludes natural “laws” like of physics) to control their environment and bring about some certainty, to minimise transaction costs, and seek to maximise benefits in economic exchanges. The argument departs from the neoclassical economics line of reasoning which treats actors as “automatons entertain[ing] no social ties among each other or the rest of

⁴‘Forum shopping’ -the strategic selection of favourable institutional type –bounded or conditioned by the availability of alternatives or a multiplicity of institutional choice and constraint in the context of existing alternatives (Jupille, 2006: p2)

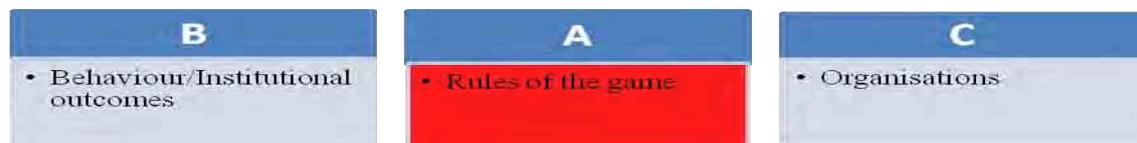
⁵‘Human action’ -an interpretation of events in terms of human intents and purposes (Rozycki, 2006).

society” (Richter, 2008:p158). This study privileges a subjective rational utility model that includes costs and benefits beyond material or financial gains as explained in section 2.6.

A proper formulation of a widely applied concept, such as that of institutions may depend on the purpose or even domain of the analysis. As Aoki (2001:p1) observes “...Which definition of an institution to adopt is not an issue of right or wrong; it depends on the purpose of the analysis.” Since the main objective of this study is to understand how institutions influence outsourcing transactions of construction projects, the researcher adopts a definition of an ‘institution’ that is useful and amenable to the analysis of these issues.

A survey of literature on the definition of institutions reveals two contemporary schools of thought –a narrow and a broad view as illustrated in figure 2.3.

Figure 2.3: Different conceptions of institutions.



Source: Parlevilet (2007).

A narrow view of institutions (A)

The narrow perspective is led by North (1984, 1990, 1994 and 2005) who defines institutions as ‘rules of the game’ and organisations as player in the game. He refers to institutions as sets of humanly devised constraints on behaviour in the form of rules and regulations. According to him, institutions structure human interactions both within and across organisations, and so organisations and their members are ‘players in the game’. Young (1994); Williamson (1996); and Poel (2005) support this view and add that institutions are “...codes of conduct that serve to define social practices, assign roles to participants in these practices, and guide the interactions among occupants of these roles: (ibid:p3). North (2005) is therefore very categorical and painstakingly distinguishes organisations from the rules of the game (Aoki, 2008).

A broad view of institutions (A+C)

On the other hand, there is a broader, more encompassing view of what institutions are. This broader perspective treats both the *rules* of the game and *organisations* that facilitate in *coordination of human behaviour* as institutions (World Bank, 2003:p38, Coriat and Dosi, 2002; Grief 2006). Grief's expansive definition of an institution states "An institution is a system of rules, beliefs, norms and organisations that together generate a regularity of (social) behaviour" (ibid: p30). The World Bank appears to embrace the broader view when no distinction between rules of the game and organisations is made in reference to institutions as "...the rules, organisations, and social norms that *facilitate coordination of human action* [emphasis added]" (ibid: 2003:p38) and also "...rules, enforcement mechanisms, and organisations" (ibid: 2002:p6). In a commentary on Douglas North's book, *Understanding the Process of Economic Change* (2005), Aoki (2008:p11) discounts the distinction between 'rules of the game' and the 'players in the game' as a subtle one and observes:

It is true that organisations, whether political, economic or social, are players of the game in the relevant domains. At the same time, however, the ways in which organisations are structured (e.g., how (economic) activities are bundled together into an organisation and how organisational participants are incentivised to interact with each other) may be conventionalised in the organisational field (to use the terminology of organisational sociologists), and innovated by entrepreneurs.

In other words, organisations are players but also set rules of the game. Coriat and Dosi (2002) while accepting the broader view, clarify that institutions can be (a) formal organisations (ranging from firms to technical societies, trade unions, and universities, to state agencies) (b) patterns of behaviour that are collectively shared (from routines to social conventions to ethical codes, and (c) negative norms and constraints (from moral prescriptions to formal laws). The debate of whether organisations are a form of institutions appears to be nearly resolved when Hogson (2006) notes

Organisations involve structures or networks, and these cannot function without rules of communication, membership, or sovereignty. The unavoidable existence of rules within organisations means that, even by North's own definition, organizations must be regarded as a type of institution. Indeed, North has essentially accepted that organizations themselves have internal players and systems of rules, and hence by implication organizations are a special type of institution (letter to the author [Hogson] October 7, 2002) (ibid: p10)

In practice, organisations are referred to as institutions. Jackson (2002) shares this view in his book *Business Development in Africa and Asia: the role of government agencies* when he states, “Institutions here are used in a sense of the broad range of implementing agencies” (ibid: p44). *Merriam-Webster Online Dictionary* sums it up as “...a significant practice, relationship, or organisation in a society or culture...something or someone firmly associated with a place or thing...an established organisation or cooperation (as a bank or university) especially of a public character”.

This study adopts a broad view of institutions that encompasses both the rules of the game as well as the actors or players in the game in line with the institutional framework (figures 2.1) as gleaned from World Bank (2003) and Williamson (2000). The study however, excludes *behavioural* outcomes (figure 2.3) as institutions because that is considered as one of the dimensions of institutions in this study. The broad view of institutions adapted is useful for this study because it allows a more embracing analysis of influence of institutions from its three dimensions of *structural*, *procedural* and *behavioural* as discussed later on in this section. Enforcement is an important pillar of institutions (Aoki, 2008) which is discussed next.

Enforcement as a pillar of institutions

Institutions matter when they are enforced in order to serve their function as devices to reduce uncertainty in interactions and facilitate coordination of human action. “Ignored laws are not rules [institutions]” (Hogson, 2006:p6). Both formal and informal institutions require enforcement. Institutions are shared expectations of rules whose content includes effective enforcement. The key point is ‘shared systems of belief about the expected behaviour’ of others including those required for enforcement. For example, if a policeperson granted powers by law to detain suspected terrorists at airports is generally expected to take a bribe and actually use the threat of making one miss a flight for extortion instead of using the

powers appropriately to enhance security, such a piece of legislation does not become an institution because it may fail to be socially construed as a “reality” for the intended effect (Kingston and Caballero, 2008).

“... [An] institution can exist only if people have particular and related beliefs and mental attitudes” (Hogson, 2006:p4) that enables observance. Aoki (2008) makes this point while commenting on the work of North (2005) “...who the players are; which player can/cannot do what; and what scores accrue to whom through which combination of plays” (ibid:p6) is vital knowledge about the game. Aoki’s analogy suggests that rules that are *actually* enforced constitute an institution; “...ways in which the rules are enforced constitute ...important pillar of institutional arrangements” (ibid 2008:p6). “A rule “forbidding” some behaviour will be effective only if people generally expect others (including those charged with enforcing the rule) to act in a way which makes it effective” (Kingston and Caballero, 2008:p18). The calculating rational actor has to take into account the costs that arise if the institutional boundary is crossed (transgressed) (Gobel and Thomas, 2005). Also brought into the calculations is the *probability* of being detected that the institutional boundary has been crossed and sanctions are expected to be imposed, that raises the perceived costs to the actor. From a social perspective, the crossing of institutional boundaries may carry with it the stigma of “...eccentric, antisocial or criminal” (ibid: p3). Therefore, knowledge of existence of rules of the game and even organisations *per se* does not automatically signal them as institutions unless there is effective enforcement mechanism; so that a rational actor is forced to weigh costs of transgression.

However, people do make mistakes often because of incomplete information but if they expect the sanctions and perceive them to be costly they will try to follow the general pattern of prescribed behaviour (Tullock and McKenzie, 1985; Gobel and Thomas, 2005). But what constitutes an institution or its content that accounts for its influence?

Dimensions of institutions and their influence

The ultimate power of a concept lies in engaging multiple dimensions that add depth to it. As already noted, this study adapts a three dimensional model –*structural, procedural, and behavioural*; based on Van Hees’ proposition (ibid: 1997). It is important to dimensionalise institutions to further clarify and operationalise them as an ‘institution’ does many things that come as a package (Ogilvie, 2007). The contents of pack need inspection.

Probably, the broadest way is to consider institutions as both *formal* and *informal* (North 1989; Tsai 2006, Li 2007; Brousseau and Raynaud, 2007). Nevertheless, it begs the question of what are the constitutive commonalities of both formal and informal institutions. Camarinha-Matos and Afsarmanesh (2007) working with collaborative networked organisations (CNOs) propose four dimensions: structural, functional, behavioural and componential dimensions. Though the dimensions were modelled to suit a collaborative network, they are relevant to larger communities and whole society. Van Hees (1997, 2000) and Hine (1993) working specifically on institutions and governance respectively, propose three dimensions of institutions –*structural, procedural, and behavioural* which are related to the four dimensions by Camarinha-Matos and Afsarmanesh (2007). These dimensions also match the “cognitive, normative, and regulative structures and activities” - the three “pillars” of institutions as proposed by Scott (1995:p35). These dimensions have been used to analyse business (Leaptrott, 2005) and can be useful towards operationalising the concept of institutions. Below each dimension is discussed as presented in table 2.1.

The three rows in the table (2.1) represent dimensions, and the columns depict summaries of descriptions and explanations of the dimensions discussed in detail below.

Elements of structural dimension of institutions.

This is a core but mainly hidden dimension of an institution, and some authors portray it as

tantamount to institutions themselves. Hogson (2006) observes that while Institutions are social structures, not all social structures are institutions.

Table 2.1: Dimensions of institutions

Dimension	Description	Explanation
Structural	Constraints due: <ul style="list-style-type: none"> ▪ Organisations, legal system, ▪ Opinion of significant others ▪ Ascribed social roles and expectations of it (role) ▪ Societal channels of communication ▪ Capacity to process and use information 	Constraints affecting: <ul style="list-style-type: none"> -who is included/excluded - available strategies to participants -formation of preferences of individuals -distribution of power
Procedural	<ul style="list-style-type: none"> ▪ Methods ▪ Mechanisms for decision making ▪ Mechanisms influencing access to information ▪ Mutual relationships of decision making organs ▪ Sanctions attached to breaches of constraints 	<ul style="list-style-type: none"> -Links of individual strategies to results e.g. majority voting procedure, consensus type of committee decision making etc -who submits request and to who
Behavioural	<ul style="list-style-type: none"> ▪ Patterns of behaviour that emerge spontaneous in an ongoing relationship (conventions) ▪ Excludes incidental actions 	<ul style="list-style-type: none"> -Conventions/strategies for transaction cost minimisation and benefits optimisation– e.g. social capital -cognitive element guides behaviour through <i>construction</i> of “social identity”

Source: Gleaned from literature (Camarinha-Matos and Afsarmanesh, 2007; Van Hees, 1997, 2000).

Wells (1970:p3) describes institutions as forming “...an element of social structure” and in the tradition of Thorstein Veblen and John R. Commons, institutions are understood as “a special type of social structure with a potential to change agents including changes to their purposes and preferences” (Hogson, 2006:p2). “The social structure of any society shapes and informs the behaviour of its actors (Maclean, 2008:p797).

It is Hees’ observation that underscores the dimensional element as, “...a phenomena that persists over a period of time...” (Van Hees, 1997: p59). It is a virtual, moral, bold or subtle, or capacity constraints (or enabler) within which individuals act and interact. For example, a partisan politician is constrained on a range of actions given a party’s platform and hence a political organisation such as a party in that sense is a structural constraint. A more subtle constraint may be peer pressure, opinion of family, teachers, friends, priests, role models and others who influence the thinking about and evaluation of the actions one can take.

The role society ascribes to an individual such as breadwinner, clan or tribal leader can also be influential. “Roles often carry with them an expectation of behaviour that does not vary with the individual characteristics of the person occupying the role” (Leaptrott, 2005:p222). A clan leader who enters a public office for example, will have to juggle normative influences from both clan and public service. Often by the time a clan leader enters a public office and assumes a public service–related role, the clan role has been established for many years with a rich history of interactions with other clan members. The position holder has to manage the expectations for each role. These normative influences form part of the structural constraints as well. However, whereas actors may be constrained by ongoing social relations in the social structure and therefore should not be “...construe[d]... as independent” (Granovetter (1985:p212) they retain their “human agency, and human beings are able to act intentionally and exercise choice” (Pratten, 1997:p796).

In effect, structural constraints, as Pratten argues, are reified but should be interpreted as given to any actor only at the moment of acting. Below the discussion details constraints as they relate to organisational and human agency that determine degree of autonomy or lack of it, in terms of level of decision-making competencies.

Constraints on organisational autonomy and human action

Organisational *autonomy* in formal terms is an “exemption of constraints on the actual use of decision-making competencies of the agency (referring to structural, financial, legal and interventional on the agency’s decision-making competencies)” (Verhest, *et al.*, 2004:p104). However, following Granovetter (1993) actors (individuals, organisations) are socially embedded in interpersonal and inter-organisational networks. While an organisation with formal autonomy could in theory possess discretion to decide on choice and use of resources, financial, human and others, in practice this may be constrained by its social embeddedness. Sometimes constraints on autonomy are subtle procedures such as who appoints managers,

board of directors, who evaluates, promotes, or re-appoints them. It might also be due to lack of internal cohesion or trust (Jessop, 2008). This embeddedness of organisations leads to constraints and dependencies that are structural and influence firm actions (Granovetter 1985; Hulman 2004). These organisational interdependences form an important aspect of interplay of institutions discussed in section 2.4. Other constraints are source of funding and nature of release of those funds (ibid). For an individual actor, the sub dimensions of structural constraints are slightly different and are discussed next.

Constraints on individual actor's choice of actions

Extant literature identifies three sub-dimensions of structural constraints – those relating to *individuals* participating in a decision process, those relating to the *strategies* available to the individuals making choices, and those relating to the *preferences* of the individuals. Each of these sub-dimensions of constraints can assume a wide variety of forms ranging from physical, legal/legitimacy, moral, socialisation and others (van Hees, 1997). As Hogson argues, individual rationality is situated in their social and material context. “[T]hought and action are inseparable from their [individuals’] context ... agency and structure are both important and mutually constitutive” (Hogson, 2007:p6) and to “construe them as independent is a grievous misunderstanding” (Granovetter, 1985:p212). Van Hees’ *structural dimension* of institution resonates with Camarinha-Matos and Afsarmanesh (2007) reference to *structural* and *componential* dimensions of CNOs. A structural dimension would be static, meaningless without, a transforming mechanism to particular outcomes -the procedural dimension.

Procedural dimension of institutions and human action.

The procedural dimension covers the process by which an institution functions either in “a traditional sense or some other established way of doing things” (Merriam-Webster Online Dictionary). Procedures (protocols of decision-making and sanctions of breaches) relate to

rituals, methods, or mechanisms, which systematically transform the actions taken by individuals into particular results. For example, this may refer to mechanisms through which decision making within committees takes place (majority vote, consensus, chairperson's casting vote); and the way committees are mutually related (e.g. considers only submissions from certain offices/departments or have to wait for complaints to be brought to it), including the effect these mutual relations have on the *what* and the *way* decisions are made. It may also involve how funding is received and the manner of accountability (Verhest, *et al.*, 2004). This characterisation corresponds to the one by Camarinha-Matos and Afsarmanesh (2007). Procedures – their observance or lack of it can render a practice or an action legitimate or illegitimate in society even when the *behaviour* would otherwise be acceptable.

Behavioural dimension of institutions and human action.

The behavioural dimension is the more obvious dimension of institutions. Structures may exist and procedures are laid down conferring powers to actors, but such powers may lapse, and institutional dispositions may fade, if they are not exercised in sufficient frequency (Hogson, 2006). "...[T]he only way in which we can observe institutions is through manifest behaviour" (ibid: p3). Indeed, some institutionalists define institutions as "prescribed patterns of correlated behaviour" (Foster, 1981:p908).

However, reducing institutions to behaviour would be misleading; an observation alluded to by Hogson (2006). There are behavioural regularities which are not necessarily institutions. For example, while removing a jacket in a restaurant may be a behavioural regularity, it does not necessarily qualify it as an institution. By not removing one's jacket there may be no sanction other than perhaps discomfort, but failing to remove a hat while entering a church or entering a mosque with shoes, can attract indignation or even physical attack in some contexts. This is because a community of believers generally expect that behaviour and deviant behaviour will be sanctioned. Removing shoes in a mosque is a behavioural

dimension of an institution because “...people have particular and related beliefs and mental attitudes” (ibid: p4) emanating from the social structure but manifest in the behaviour. It is *human action* which Rozycki (2006) refers to as an interpretation “...of events in terms of human ...intents (ibid: p1) or based on *individual rationality*. A regular pattern of human action (behaviour) can then be explained in terms of incentives/disincentives involved and how people *interpret* them. Shared interpretation or mental models (thoughts, knowledge) will generally engender similar actions/behaviour (Denzan and North, 1994; Stein, 1997). Such knowledge or thoughts are part of the *social structure* and processes, or *procedures*, the other dimensions of institutions. As Hogson (2006) observes, “...generally institutions enable ordered thought, expectations, and reaction by imposing form and consistency (habit) on human activities” (ibid: p2) although not in a deterministic manner. In this connection, Pratten (1997: p796) concludes “...human intentional agency presupposes already existing ... structure; the latter cannot be regarded as the mere creation of individuals. At the same time, social structures are reproduced and/or transformed only through the actions of agents” Structure and agency are mutually constitutive as already pointed out and behaviour generally manifests the effect of other dimensions of institutions.

What institutions are – a summary

What understanding of institutions can one adopt from these varied perspectives? This study adopts the following understanding of institutions as summarised:

Firstly, institutions are [*hu*]man made and “necessarily involve interaction of agents...characterised by common conceptions, routine, habits, and values” (Hodgson 1998, 2006; Ostrom 1986; North 1990). Secondly, they have a *structural* dimension, the phenomenon of persistence over a period, and form the constraints and permits within which individuals act, and interact (Van Hees, 1997, Clague, 1997, Williamson, 2000) although not in a deterministic manner as observed above.

Thirdly, institutions have a procedural dimension as mechanisms which systematically transform the actions of individuals, including enforcement, into particular results (World Bank 2002, van Hees, 1997, Darden, 2002) – for example, procedural law as steps a case must undergo.

Fourthly, institutions have a *behavioural* dimension, which refers to individual's strategic regularities or patterns of human behaviour (Rowe, 1989). Examples of behavioural institutional aspects are conventions, which are regularities in conduct that emerge spontaneously when individuals in a group are engaged in ongoing relationships with each other. Van Hees (1997:p60) adds "...such conventions facilitate processes of mutual adjustment and learning partly responsible for dynamism in institutions, thus reducing the complexity of the social situation". This behavioural dimension of institutions is often the easily observable part - the manifest of an institution (Hogson, 2006). This thesis focuses on *human action*, which is intentional behaviour based on rational calculations albeit being bounded.

This type of dimensionalisation of institutions (under structural, procedural and behaviour aspects) provides a novel approach for analysing influence of institutions on processes. The next section discusses the broad typologies of institutions (formal and informal) in order to understand why sometimes, human action may appear inexplicable.

2.5 Pattern of influence of formal and informal institutions

...in the end, it is the law that is written in the hearts of the people that counts
(Attributed to Rousseau by Riker (1976:p13) also Jeremiah 31:p13)

One of the research objectives in this study is to explain, "Why one type of institution (formal or informal) may be more effective in influencing construction project contracts?" Accordingly, this section attempts to define and characterise the broad categories of formal and informal institutions. Trying to draw a distinction between formal and informal institutions can illuminate the project of attempting to identify what type of institution

actually influences the process of public sector outsourcing and at what point. It will also aid in identifying transaction costs associated with each type of institution.

This section uses diverse literature to distinguish formal and informal institutions. We argue that whereas literature generally identifies a dichotomy between formal and informal institutions, in practice it is a continuum, which stretches from strong formal to strong informal institutions with weak formal and informal institutions lying in between. A bold dividing line between these types of institutions does not seem to exist (except for extremes) and instead it is a matter of degree as the discussion reveals.

Table 2.2 summarises the attempted differentiation of institutions based on their degree of formality and informality using five criteria of *codification, formation, enforcement, power, and personalisation* according to a characterisation employed by Li (2007).

Table 2.2: Formal-informal paradigm

Attributes	Formal	Informal
Codification Formation Enforcement Power Personalisation	Explicit, Exogenous, Tight, Hierarchical Depersonalised	Implicit, Endogenous, Loose, Horizontal, Personalised
Example of Strong	Law and position authority Code-based legal system Authoritarian control Case based legal system Democratic control	Market and delegation Regulated pricing Free pricing
Example of Weak	Personal trust and friendship Affective trust Cognitive trust	Culture and ethics Shared values in strong clan Peer pressure

Source: Adapted from Li (2007).

Stark (1989) refers to informality as a metaphor associated with institutional weakness and sometimes outright corruption and therefore often condemned. There are those who believe that informality signifies particularism which unfairly favour ‘insiders’ over ‘outsiders’; the well connected over the disenfranchised, and is devoid of transparency (Landry, 2004). This

attitude may explain why some consider informal institutions legitimate targets for formal regulation by enacting statutes to control excesses of informality.

However, those who regard informal-formal interplay to possess both convergences and divergences challenge that view (Krug and Hendrichke, 2008; Tsai, 2006, Farrel and Heritier, 2003; Helmke and Levitsky, 2004; Raiser, 1997) as discussed later in section 2.6, but first the characterisation of differences.

Using the criteria represented in table 2.2, three major ways can be used to conceptualise distinctions between formal and informal institutions, namely: (i) state-societal divide (ii) the location of enforcement, and (iii) whether they are openly codified or not (North, 1990; Raiser, 1997; Olsson, 1999; Lauth, 2004; Li, 2007).

State-society divide

This criterion privileges a divide based on governmental or non-governmental dichotomisation of institutions. According to studies of state-societal divide, ‘formal institution’ relate to state or government bodies (courts, legislatures, bureaucracies). The state enforces the rules, procedures, regulations or guidelines such as constitutions, laws, statutes, treaties, property rights, contracts, decrees, official language and money, while an ‘informal institution’ encompasses civic, religious, kinship, ethnicity, and other social rules and organisations (World Bank, 2003; Olsson, 1999; Helmke and Levitsky, 2004). On formality or informality, Li (2007:p229) observes

...*informality* as “...the nature of social ties and events as implicitly assumed, endogenously embraced, and flexibly enforced by horizontal peer pressures in particularistic personalised process (e.g., subjective, affective, people-oriented and sentimental)..., while *formality* as explicitly prescribed, exogenously imposed, and rigidly enforced by vertical authority powers in universalistic depersonalised process (e.g., objective, cognitive, task-oriented and instrumental)”

In other words, formal institutions which the state emphasises are related to the law, hierarchy form and transaction leadership. They may include official pronouncements and administrative orders or fiats. The informal institutions of society on the other hand are

traditions, customs, personalised trust, strong social ties, affective commitment, relational contract, clan control, religious beliefs, moral values, culture, and transformational leadership including norms that have passed the test of time (Pejovich, 1999; Li, 2007). Of informal institutions, Pejovich (1999:p3) further notes “They embody the community’s prevailing perceptions about the world, the accumulated wisdom of the past, and a current set of values”.

In essence informal institutions are being referred to as *culture* which is maintained from generation to another and this characterisation relates to ‘societal embeddedness’ as discussed in section 2.3 of this thesis. Pejovich (1999) appears to make no distinction between *institutions* and *culture* although the two are related concepts but not the same (North 1990; DiMaggio, 1994). This thesis focuses on institutions and treats culture as outside the theoretical purview of the study. Noteworthy here is that some informal institutions are not trans-generational as Pejovich implies. Following Landry (2004); Tsai (2006); Krug and Hendrickschke (2008), there are *adaptive* informal institutions, which emerge in a relatively short time as explained below.

Adaptive informal institutions evolve as coping strategies by local state and non-state actors, to evade what structurally people deem either unjust or excessive formal restrictions or constraints. For example, World Bank asserts, “When institutions [formal] are weak and unjust, the result is mistrust and uncertainty” (2003: P37). This may lead to evolution of informal practices to deal with uncertainty and as it becomes widespread, it assumes institutional proportion. It is argued that the legal regime enforced by the state comprise of a myriad of constraints and opportunities that may motivate everyday state and non-state actors to devise novel operating arrangements that are not officially sanctioned. When these arrangements are repeated, they can spread to other areas through diffusion, and then what may have began as novel, localised may take on institutional reality. “... [A]daptive informal institutions are likely and thrive in localities where the enforcers (base-level guardians/street

level enforcers) of formal institutions and the creators of informal adaptations have convergence interests” (Tsai, 2006:p126).

In other words, the state-society distinction in order to dichotomise formal and informal institutions, may fail to account for a variety of informal institutions such as informal rules that govern behaviour within state organisations (e.g. bureaucratic norms) or official rules that govern non-state organisations such as religious orders, political parties, and interest groups in corporations (Ellickson, 1991; Olsson 1999). Site of enforcement of an institution has also been used to distinguish formal and informal institutions as explained below.

Location of enforcement

Li (2007) has observed that some commentators (Helmke and Levitsky, 2004) have used the location of rule enforcement to differentiate informal institutions from formal ones pointing out that the former are *self-enforcing*. For example, norms do not usually require third-party enforcement. Members of a community’s mutual best response to one another will demand sanctions on one with deviant behaviour for violation of norms. The mechanisms for enforcement which may cause the deviant to acquiesce to group or social pressure may take the form of (i) alienation (expulsion) from the community, (ii) loss of reputation, (iii) ostracism (shunning) by family members, friends and neighbours, (iv) verbal disapproval and opprobrium or negative gossip (World Bank, 2003; Pejovich, 2006; Li, 2007). Kyriacou (2005) regards informal enforcement mechanisms as being more efficient than formal mechanisms although some members of the community with exit options can escape some of these sanctions confirming the saying “*Laws like cobwebs, entangle the weak, but are broken by the strong*” (Solon c575 B.C. in Feige, 1997).

By contrast, formal rules (statutes) use explicit punishments through third party, usually by state organs, which include judicial system or some other arbitrator. Max Weber (1954:p5) in

Sauders (2008) defines law as “...externally guaranteed by *probability*⁶ that coercion, to bring about conformity or avenge violation, will be applied by a *staff* of people holding themselves specifically ready for that purpose” [emphasis added]. In this instance, informal institutions such as social norms are “... non legal rules or obligations that influence individual decisions despite the lack of formal legal sanctions” (Carlson, 2001:p1238). Norms constrain self-interested behaviour adopted and enforced in a decentralised setting. Some scholars (see Darden for full account) however, have discounted this characterisation. Darden (2002:p17) points to instances of state enforcement of informal arrangements such as in organised/institutionalised corruption, which is used as

... a means through which state leaders buy compliance from subordinate officials – i.e. an informal contract - and also provides the basis for control through systematic blackmail and the threat of selective enforcement of the law.

Darden is referring to how corruption is used as a tool by some political leaders of developing and transition countries to reward or punish through selective application of the law and *show trials* (ibid: 2002). In other instances it takes the client-patron relationship or ‘godfather’ [mother] phenomenon (Kurer, 1993). In business, contracts remain open to third party involvement in order to enforce property rights, although in practice it may be a last resort. One may use a threat of going to court to enforce informal mechanism. In essence, site of enforcement is also not fully deterministic as far as formal and informal institutions divide is concerned. Other authors (Carey, 2000; Brinks, 2002) have employed codification as discussed below.

Whether openly codified or not

In this study, open codification (the written form of the institution), is used in an attempt to distinguish formal and informal institutions because of ease of reference. The Helmke and Levitsky (2004:p726) characterisation is adopted which describes rules, procedures and

⁶ *Probability* implies one can escape detection or even when detected may escape sanction due to enforcement weaknesses.

regulations as openly codified “... in the sense that they are established and communicated through channels widely accepted as official”.

On the contrary, informal institutions are socially shared, usually unwritten, created, communicated, and enforced outside of officially sanctioned channels (Brinks, 2002). One can easily trace origins of formal institutions to a piece of legislation or to an official pronouncement by the state. Government authorities enact, enforce or change formal institutions while this is not the case with an informal institution. However, as earlier observed codification *per se* does not warrant a rule to be institution, it requires that wide spread third party enforcement must take place for a rule to qualify as an institution. Carey (2000) supports this criterion based on open codification or lack of it, in his conclusion after an extensive survey of related literature. He caveats that there are no compelling arguments to assume that all written rules serve as effective constraints on social behaviour, or that only written rules effectively constrain social behaviour. Nonetheless, codified and enforced rules constitute a higher end of formal institutions in practice. For example, if something is not written it is generally treated as informal.

In summary, formal and informal institutions coexist in both the developed and developing worlds. The rich and the poor, the weak and the powerful rely on informal as well as the formal institutions in varying degrees to facilitate transactions (Laundry, 2004; Peng, 2004). In general, informal institutions are relatively more important in poor countries and “...small, traditional communities where formal institutions are less developed and the reach of formal law and state power relatively weak” Bhardan (2001) in Soysa and Jutting (2006:p8). This observation of the weak reach of the formal law and the state power towards the peripheral is in part the basis of the hypothesis drawn in chapter one, that at local government level outsourcing transactions would be influenced more by informal institutions than at the central government level. The next section turns to interactions of institutions.

2.6. Nature and pattern of interaction of institutions

How do formal and informal institutions interact to influence decision-making?

What forms of interactions exist and why do their consequences differ within space and time?

Institutionalists argue that institutions do not operate in isolation from one another. They exist as part of “a whole interlocking framework of institutions” (Ogilvie, 2007:p668). Although interactions between formal and informal institutions have long been recognised, they did not enter mainstream studies until the 1990s when former Soviet republics provided a privileged window for their observations. Earlier, Goran (1980) in his book ‘*Beyond Ujamaa in Tanzania: Underdevelopment and an Uncaptured Peasantry*’ had pointed to the informal trade that eluded integration with the formal marketing arrangements of Ujamaa villages of socialist Tanzania. Such a narrow focus on formal institutions has been responsible for criticisms levelled against mainstream rational choice theory, which give unwarranted attention to formal rules (Weyland, 2002, Raiser, 1997, Kyriacou 2005).

However, over the last fifteen years or so a plethora of research has surfaced facilitated by wide spread study opportunities offered by former Soviet republics as pointed out already. These researchers have investigated how and with what consequences, institutions interact. Some scholars have examined institutional ‘layering’- the friction or coexistence of institutions (Mahoney, 2000; Tasi, 2006). Others have investigated institutional ‘conversion’- the use of institutions in ways that deviate from their intended purpose (Lieberman, 2002; Thelen 2004); while Farrell and Heritier (2003) identify a *recursive*⁷ relationship between formal and informal institutions in the European Union, or co-evolution of institutions by Krug and Hendrickschke (2008).

⁷ Pertaining to or using a rule or procedure that can be applied repeatedly, "recurrence" or "recursion" of, relating to, or constituting a procedure that can repeat itself indefinitely (Merriam-Webster Online Dictionary).

The main observation in Eastern and Central Europe after the collapse of the Soviet Union contests the classic economic predictions that there should be rapid displacement of informality due to the modernisation of political systems. Instead informal institutions have displayed high degree of tenacity (North, 1994; Posner, 2000). Some authors argue that formal institutions induce creation of informal institutions (adaptive) as Ogilvie (2007:p674) counsel

Any theory of institutions must not merely look under the streetlights of the formal sector ... but also venture into the alleys of the shadow economy. Every formal institution creates an informal counterpart, if only because every law creates a crime

While Ogilvie observation may deserve some merit, it does not pale the fact that many informal institutions predate formal institutions. The coexistence of formal and informal institutions reveals that actors practice some type of ‘forum shopping’ juggling in their preference of certain institutions “from which they hope to obtain greatest possible net utility” (Gobel and Thomas, 2005: p3). This form of forum shopping is context based and most studies have focused in developed (OECD) and transiting countries of Asia and Eastern Europe leaving a gap in study for the Sub-Saharan countries such as Uganda.

The researcher argues in this section that institutional interactions are mediated by transaction costs at the individual level for preferred institutional arrangements. Nevertheless, following Ouchi (1979, 1980), Watson *et al* (2005), Vatn (2007), Boudreau, et al., (2000), and others, transaction costs and benefits are not merely financial as per neoclassical theory. “...but transactions also have benefits [non-material] ... incurred in making an economic exchange ... [they] are above and beyond those benefits of direct financial return” (Watson, *et al.*, 2005:p132). With the consideration of transaction benefits, the argument broadens to recognise plural rationality or existence both individual and social rationality (Vatn, 2007). Actor’s utility function will incorporate social capital costs and benefits (Krug and Hendrischke, 2008). This adds some complexity in the analysis of institutional interplay but a worthy one since ‘automatons’ are rare in practice (Richter, 2008).

As already pointed out, institutions do many things and their effects are intertwined. Gilvie (2007) warns that it would be misleading to focus on their effects selectively. In this regard, Zenger, *et al* (2001:p1) observes;

...exchanges are governed by a set of formal institutions (contracts, incentives, authority) and informal institutions (norms, routines, political processes) which are deeply intertwined. ... for the most part, informal institutions are treated as exogenous forces changing the benefits to use alternative formal structures, and formal institutions are treated as mere functional substitutes of informal elements governing exchanges. As a result, scholars have not sufficiently explored the interactions between formal and informal institutions.

Similarly, Helmke and Levitsky (2004) and Darden (2002) note that much of the contemporary literature assumes that actor's incentives and expectations are shaped primarily by formal rules. The tendency has been for formal institutions to be analysed independently of informal institutions and likewise to study informal institutions as mere functional substitutes. As a result, "scholars have not sufficiently explored the interactions between formal and informal institutions" (Zenger, *et al.*, 2001:p3). However, there is a growing volume of works on interplay of formal institutions at the global level amongst international and national regulative regimes especially on environment (Underdal and Young 1996; King 1997; Gehring and Sabastian, 2006) and also within nation states.

Nevertheless, what is institutional interaction? "Institutional interaction [interplay] generally refers to the phenomenon that ...institutions influence each other in ways that are relevant for their development and effectiveness" (Oberthur and Gehring, 2006:p1). The interactions can take several forms: (i) single cause-effect relationship between two institutions, (ii) interaction influencing the decision-making process of the target institution, and (iii) interaction directly affecting the implementation and effectiveness of the target institution. These interactions can happen between and among formal and informal institutions either horizontally or vertically between institutions of different levels of social organisation (institutional framework) such as the state. This study examines how this occurs at various levels of government.

Cases of inter-hierarchical institutional interaction and human action

Krug and Hendrischke (2008) examine cases of institutional interaction of locally based economic regimes in China *vis a vis* provincial and central government (CG). Their aim was to identify the diversity of local business systems, and explain how this diversity resulted from the integration of major institutional forces. Taking micro (local) as sub-provincial level, they used it as the unit of analysis based on their observation that the majority of China's businesses were registered at this level of government. "Our analysis ...on interplay between the government and business sector and ...institutions governing business relations where the outcome is 'new' firms and 'new' business practices" (ibid: p87). Their study employed both qualitative and quantitative approaches using interviews at the local level to capture the process-oriented nature of change. Questionnaires were used to tease out some statistics on demographics, firm ownerships and business relations. The use of written or unwritten contracts and methods of enforcement were also observed. Their findings confirmed the work of Tsai (2006) on 'adaptive informal institutions' and makes contribution to methodology, departing from the classic growth theory and transition literature which rely on macro-level perspective and quantitative data of longitudinal studies. Whereas their work is valuable contribution methodically and to institutional interplay, the study offers less value to a specific industry such as construction and the dynamics that would emerge in outsourcing construction projects by a local government (LG). The study misses out valuable understanding that a comparison between various levels of government and the businesses would provide; which is an object of this study.

Farrell and Heritier (2003) note that whereas the relationship between informal and formal institutions can be explained *a priori*, it is difficult to predict *ex ante* the *ex post* effects of formal institutional changes on informal institutions and therefore on institutional outcomes. This study did not attempt to explain the predictive phenomenon. Instead, it attempted to discover the contemporary interplay between strands of the formal institutions relevant to

outsourcing of construction projects, and those of informal institutions. The study also sought to explain how social capital enters actors' bounded rationality as well, and how and why institutions affect the outsourcing process in a developing country context, Uganda.

2.7 Actors' preferences of institutional types and social capital

It is argued in this section that transaction costs leverage actors' choices of institutions or governance structures in their economic transactions. The discussion traces how contemporary understanding has evolved to discount neoclassic assumptions. In neoclassic economics, actors engage in economic transactions to maximise individual utility. In this utilitarian tradition, it is assumed that the rational actor is 'all knowing' but self-interested whose behaviour and actions are minimally affected by social relations. Rational action is assumed *singular* in focusing on economic costs and benefits calculations in an attempt to maximise net utility gain. However, following Simon (1955), William (1985) and others, actors are rarely omniscient, their rationality is often *plural* (Granovetter, 1985; Vatn, 2007), and economic transactions cost resources (Course, 1937). This is because full information is hardly attainable in practice and therefore actors will incur transaction costs in search for, processing or evaluation of information (Williamson, 1985, 1998 North, 1990; Foss, 1995; Sautet, 2005; Gobel and Thomas, 2006; Dhillon and Rigolini, 2006; Ogilvies, 2007). Transaction costs differ from production costs as discussed in next paragraph.

In his original conceptualisation of a "trans-action", Commons considered the smallest unit of economic investigation as the relationship between individuals (Forest and Meheir, 2001) and in economic terms it "... covers three fundamental activities, ... exchange, production, and distribution, three types of transactions -bargaining, managing, and distribution ..." (ibid:p592). Taking a bargaining transaction, according to Jeff (2001), it is an agreement between a buyer (principle) and seller (agent) for a seller to provide labour, service, or a product to a buyer. Privileging the point of view of the buyer, a transaction includes a number of actions. (i) Actions undertaken to locate a preferred seller (searching), (ii) negotiating to

reach a bargain, (iii) drawing an agreement (*ex ante*); (iv) the actions of carrying out the agreement (enforcement), and (v) all negotiations that are undertaken in situations that change the initial agreement *ex post* contract (Coase, 1960; Scott, 2001; North, 1990; Cai, 2004). These actions cost time, effort, and money. Extant literature refers to them as *transaction costs* (TCs) discussed under the genre of *transaction cost economics* (TCE).

The basic argument by TC economics is that trans-actors will choose a governance structure that minimises the total cost associated with a transaction (Coase, 1937). These costs differ from production costs. While production costs are in reference to the cost of technology or *know-how* employed to produce a service or a product or to acquire an asset, TC are “...the costs of performing an economic transaction” (Waschke, 2007:p1). For example, purchasing a house may attract transaction costs related to “...fees paid to the real estate agent; the cost of the time spent away from work looking for the right house, the cost of the gas burned driving around looking, and so on”. However, while the money paid to the seller is part of the transaction, it is “...not a transaction cost” (Waschke, 2007: p1). Due to TCs, individuals or even societies face different prices for same good (Benham and Benham, 2001). Actors tailor governance structures to reduce TCs albeit in general within the institutional framework.

According to Cox (2004), costs associated with enforcement of agreements are very influential in the choice of governance structures, which Pratten (1997) confirms “In effect, institutional environments that provide general purpose safeguards relieve the need for added transaction specific supports” (ibid:p791). This assertion may explain why transactions that are viable in one environment may be less or non-viable in another. A number of authors attribute variations to transaction costs to *transaction characteristics* which include factors related to a service or product under exchange (asset specificity), uncertainty (environmental and human behaviour) and frequency of transactions (Williamson, 1981; Pratten, 1997; Boudreau, *et al.*, 2007). These explain the transactions costs/governance structure nexus.

Transaction costs/governance structure nexus

The nexus between preferred combination of institutional types or governance structures and TCs are two main assumptions (1) About service-specific factors (Williamson, 1981), and (2) Actors' specific factors -boundedness (Cox, 2004; North, 2005; Boudreau, *et al.*, 2007; Aoki 2008). Next the discussion turns to each assumption in relation to their influence on TCs.

i. Service-specific factors and institutional environment

Service-specific factors identified by Williamson (1981) include asset specificity and ease of measurement of TC. Asset specificity refers to whether specialised investments are needed to deliver the good or service. Some services require heavy and specialised investment, which becomes a barrier to free entry and exit into the industry. This barrier goes higher if there is a few or only one buyer such as a government(s); or where investments are difficult to adapt to other uses (specificity of assets). Such a phenomenon of limited competition generates a **sellers' market**, where sellers enjoy monopoly or oligopoly. This monopolistic/oligopoly power can be used opportunistically by the seller(s) raising prices or lowering quality with little risk of penalty. In practice, the winner of first contract has inherent advantage in subsequent rounds of contracting for the service because potential competitors may deem it a high risk to stake out so much when they are uncertain of winning.

The opposite of a sellers' market can take place where, due to low or limited barriers of entry because of low asset specificity, vendors face stiff competition. It becomes a **buyers' market** (Ogilvie, 2007). TCs will increase for the buyer in the first instance of monopoly of the seller in an attempt to safeguard the steady stream of services but also a threat by the buyer to abandon the service altogether can render the seller's assets redundant. In the second instance, the sellers in a buyer's market are vulnerable to exploitation in their desperation to win the next contract under such very stiff competition. In either case, there will be high costs of monitoring and protecting one's interests.

Generally, service or asset specificity can lead to *ex post* opportunism. As already pointed out, a firm, with specific heavy investment to service a monopoly, can be *held-up* by the client. “Hold-ups” occur when unanticipated events place the contractual relationship outside the self-enforcing range” (Klein, 1996:p1). The contractor upon having an agreement cancelled will be stuck with assets limited in alternative economic use. While the possibility of hold-ups cannot be eliminated because all contracts are *incomplete* (limited by knowledge of the future), the phenomenon of asset specificity escalates its probability. In order to protect their investments, sellers with high asset specificity will consequently undertake safeguards against opportunistic behaviour and the buyer likewise (Rindfleisch and Heide, 1997). Contractual safeguards can be more expensive to enforce where performance is not easily measured.

Ease or difficulty of measurement of contractual obligations and TCs

There are two aspects to measure in a transaction. Those related to the whole market and others related to an asset under exchange. TCs related to the market are amenable to measurement. For example, solicitation of bids, their evaluation, and cost of pre -contract award inspection. The hard to measure costs include time taken to acquire information, queuing, bribery, and others such as losses due to imperfect monitoring and enforcement (North, 1990). These costs may be minimised where transactions are based on personal networks and other forms of social capital (World Bank, 2003) because of trust or pecuniary threat of network ostracism associated with opportunistic behaviour (Standifird and Marshall, 2000). Behavioural uncertainty of actors can escalate transaction costs.

ii. Actor’s specific factors

In the orthodox neoclassic economic tradition, costless economic transaction is assumed but institutionalists argue that if there were no transaction costs, alternative institutional or governance structures would not matter (Williamson, 1981). As already pointed out, institutions matter although their substance does not completely negate the neoclassic theoretical assumption of individual rationality. Simon (1957) in Forest and Mechier (2001)

emphasise “... the neoclassical theory should not be rejected altogether, but that it should not be read to yield what it is not supposed” (ibid:p593). Simon refuted the hypotheses of pure and perfect information and of perfect rationality along with the idea of omniscient decision maker, *homo oeconomicus* (Forest and Mechier, 2001). They advanced a notion of *bounded rationality* to explain that any human action is behaviour within constraints [boundedness] (ibid). Bounded rationality assumes that actors have circumvented cognitive capabilities and limits on their rationality although decision makers intend to act rationally (Rindfleisch and Heinde, 1997:p30). Bounded rationality is a favoured concept among institutionalists although there may be no consensus what actually binds one in a particular decision context (Simon, *et al.*, 1992; Granovetter, 1985). For example, Conlisk (1996) recommend “Economists who include bounds on rationality in their models have excellent success in describing economic behaviour beyond the coverage of standard theory” (ibid: p692). Indeed Standifird and Marshall (2000) argue that bounded rationality arises in both *ex ante* and *ex post* to an agreement due to environmental and behavioural uncertainties. Geyskens, *et al.*, (2006) explain

“Uncertainty arises either when the relevant contingencies surrounding an exchange are too unpredictable to be specified *ex ante* in a contract (there is environmental uncertainty) or performance cannot be easily verified *ex post* (there is behavioural uncertainty)” (ibid:p520).

The consequences of these uncertainties raise transaction costs and they can be addressed by choosing institutional types (arrangements) deemed to be cost minimising by the transactors. “The basic argument ... is that decision makers will choose whichever governance structure minimises the total cost associated with a transaction (Coase, 1937)” in Boudreau, *et al* (2007:p1126). From a rational perspective, people will not choose more costly ways of transacting when less costly alternatives exist. In a formal legal regime, the higher the transaction costs, the more will the exchange parties invoke informal constraints that spell lower transaction costs to shape the exchanges “although in the extreme no exchange will take place at all” (North, 1990:p75). This observation implies that individuals and societies will experiment with various institutional types to solve coordination problems and most efficient

transaction arrangements will survive and spread. This Darwinian view, postulates that better ways of organising economic life gradually evolves (Ogilvie, 2007:p656). However, a once upon a time efficient institution can be rendered inefficient but sustained by tradition (path dependency) (Peter, 2006; North, 1990). In other words, inefficient institutions can survive due to tradition or common habits.

Tendency to prefer informal institutions in networked communities

Institutions are fungible as they do many things. The case of the Chinese *guanxi* networks which traditionally cherished reciprocal norms is instructive.

Chinese *guanxi* business practices have been studied extensively and Standifird and Marshall (2000) concluded in their study that those business practices based on informal exchange networks are structural alternative in their own right, independent of contract law. They argued that where the *guanxi* network (*guanxi wang*) is well developed, the transaction cost advantages of reduced environmental and behavioural uncertainties including opportunistic behaviour are enough to warrant the integration of *guanxi* and market-based exchange (ibid: p40). *Guanxi* has proved efficient for many Chinese businesses.

While the efficiency approach is consistent with economic reasoning, it does not explain what is included in the input/output ratio in the actors' rationality assumptions. What costs and what benefits are in the utility ratio? Are there universal values one can bracket into this ratio? The answer according to extant literature seems to be *yes* and *no* as explained below.

Transaction benefits and informal institutions

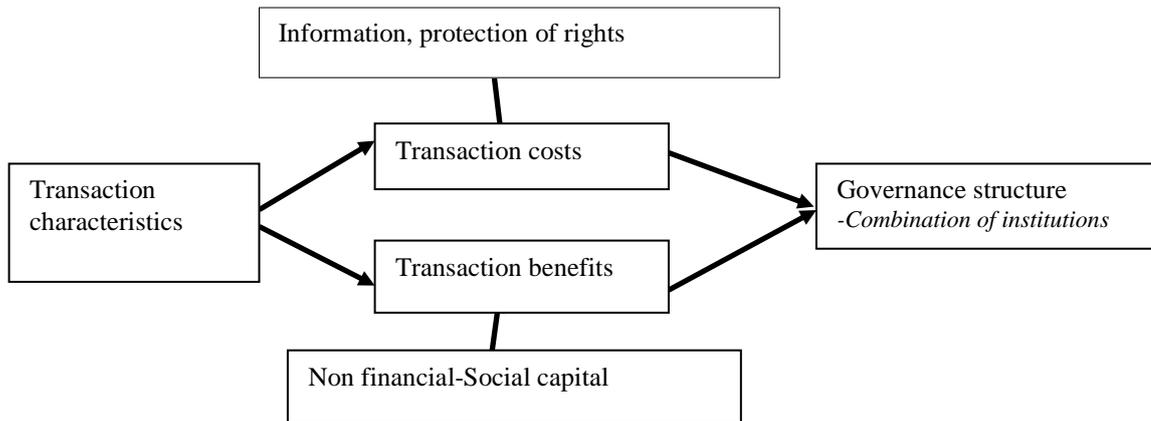
Transaction Cost Economics tends to focus on economic costs but transactions besides incurring costs they produce gains (Watson, *et al.*, 2005). These gains are usually "... above and beyond those... of direct financial return" (ibid: p132). Watson, *et al* (2005:p132) further elaborate

... [A] person employed by a firm gets direct benefits of a salary, health insurance and so forth. The same person might gain transaction benefits of reputation, collegiality, intellectual challenge,

skill development and enhanced self-esteem. In the case of a community, the transaction benefits are all that most participants gain.

These indirect benefits (gains) are mainly social arising from embeddedness of transactions. They include consideration to earn the goodwill of others which then acts as a deterrent on opportunistic behaviour to prefer cooperation (World Bank, 2003) instead of shirking. The cooperative stance among social networks have a transaction cost minimisation effect through reliance on trust and norms, elements associated with social capital, as will be discussed in the next section. Actors' proclivity for opportunism is low amongst members of the same social network due to shared norms and objectives. Because of trust, search costs for transaction partners can be lowered (ibid). These benefits may appear to be non monetary, although are inextricably linked to economic benefits. They matter in preference of institutional types although this may not be apparent to a casual observer. "It is their concealment of this relationship [to economic benefits] that enables [it]... to be effective" (Baum and Ziersch, 2009:p320). Figure 2.4 sketches relationships between transaction characteristics, costs, benefits, and choice of governance structure.

Figure 2.4: Nexus of transaction characteristics and governance structure



Source: Adopted from Watson, *et al* (2005) and Boudreau, *et al* (2007).

Transaction costs, especially the benefits are difficult to measure. They tend to be "quintessentially judgmental in their nature... [and]... depend upon subjective assessments that are likely to vary widely as people and circumstances change (Rickett, 2008: p3).

Ricketts' view is upheld by Gobel and Thomas (2006) who attributes the difficulty of measurement to the boundedness of rationality, in particular to limited information capacity of actors. Because of this limitation, actors use constructed mental models for the perception of reality. It is the shared subjective mental models that constitute institutions in accordance with Denzan and North (1994). Actors will accordingly use this perceived cost and utility to choose preferred governance structures.

This boundedness is construed as partially internal (endogenous) and also to depend on external (exogenous) factors in the actor's context at the time of decision making (Williamson, 1985; Granovetter, 1985). Rationality is therefore both situated and context dependent although the resultant behaviour may also affect structure. In other words, "The way in which knowledge develops influences the perceptions of people have about the world around them [paradigm] and hence the way in which they rationalise, explain, and justify that world, which in turn influences the costs of contracting" (North, 1990: p76).

Beyond the immediate institutional arrangements of transacting partners, people's perception of the institutional framework as either *just* or *unfair* can have effect on perceived costs of contracting. The costliness of measurement and enforcement of contracts is subjective. The 'local' experiences of individuals as well as non-local experiences of a community enter as inputs into the learning process and hence their computations of transaction costs (Aoki 2008; North 2005). Thence, even with similar rules and organisations in different contexts, the subjective models such as "...mental scripts and templates guide actors to imitate those behaviours they feel will result in positive outcomes and avoid behaviours perceived in negative outcomes" (Leaptrott, 2005:p216) to facilitate enforcement. Both efficiency model and the computational capacities of actors influence which institution is preferred for coordinating problem solving. The rationality of actors must therefore take into consideration both the economic and social costs as well as the benefits. This phenomenon of dual

consideration of social and economic factors or *plural rationality* (Vatn, 2007) affects the trajectory of decision-making. Non-material costs and benefits, social capital in particular, to which the discussion turns next, also matter in rational decision making.

2.8 Institutions, social capital interactions and human action

Informal contacts are “small change” from which a community builds its social capital (Jane Jacobs 1961).

In the previous section, it was argued that actors in economic transactions are intendedly rational though bounded. Their transaction costs-benefits considerations go beyond material calculations to include non-financial benefits mainly social. In this section, the aim is to expound on the moderating effect of social costs and benefits considerations, especially social capital, on the main assumption of the neoclassical project of financial utility maximisation.

Social capital and public policy reform implementation process

Social capital has been described as the most successful “exports” from sociology to the other social sciences and public discourses over the last twenty five years or so (Portes, 2000) and because of its wide range of applicability it has assumed multiple definitions (Kostva, 2003; Portes, 2000; Li, 2007). In section 2.2, it was noted that both institutions and social capital inhere in the structure of social relations (social structure) among actors (Richter 2008). Perhaps due to this common linkage between these two concepts, some commentators have treated them as similar or the same as Knowles (2005) notes “... the concept of social capital falls within North’s definition (of institutions” (ibid: p7) while others question why informal institutions and social capital should not be used interchangeably or as synonyms (Dasgupta, 2000; Knowles, 2005). This rather confusing characterisation of social capital may also explain why public policy scholars and neoclassical economists try to exclude it from their analysis (DeFilippis, 2001; Fafchamps and Minten, 2002; Hjerppe, 2003; Poel, 2005).

We argue in this section that whereas there may be some commonality between social capital and institutions, it [social capital] is different and serves a distinct role in public policy

discourse. To make this clarification, the section sketches out what social capital is, its dimensions, its linkage to institutions and transaction cost calculations of public sector actors and their decision-making; attempting to first operationalise the concept for inclusion in the analysis.

A functional definition of social capital

Social capital as a concept is elusive to define and may assume multiple definitions depending on the domain it is used. However, an extensive review of extant literature by Durlauf and Fafchamps (2004) found that all discussions of social capital interpret it as "...a degree of trust, cooperative norms and associated memberships or networks within a society" (Knowles 2005: p1). Others Goette and Huffman (2007) have written of it as

...a willingness of members of a society to cooperate with each other, even when it is not in their own material self-interests to do so, or a willingness to enforce beneficial social norms, even when this is materially costly to oneself" (ibid: p142).

While these concepts relevant to social capital can be traced as far back as to the work of Durkheim Simmel, Marx, and Weber (Portes, 1993), it is only in the recent ten years or so that it has been of particular interest for public policy in a broad range of fields (Ikeda, 2002; Grootaert and Bastelaer, 2002; Baum and Ziersch, 2009) promoted mainly by World Bank. Its popular use has tended to adopt two main schools of thought regarding its definition and possible influence on human action.

Social capital as a community resource and its influence on human action

Social capital as public good or community level resource is conceptualised as "...features of social organisation such as networks, norms and social trust that facilitate coordination and cooperation for mutual benefit" (Putnam, 1993: p7). This line of thought is shared with Alder and Kwon (2002:p23) who posit that social capital is

... the goodwill available to individuals or groups. Its source lies in the structure and content of actor's social relations. Its effects flow from the information, influence, and solidarity it makes available to the actor.

Alder and Kwon (2002) imply that one can passively benefit from social capital by merely belonging to a social network or other social structures. Scholars of collective social capital posit that it is available to all members, be it a social group or any community, regardless of which members actually promote, sustain or contribute to such resources (Putnam, 1995; Portes, 2000). For example, there are benefits of goodwill bestowed on one by merely being a British citizen while travelling in certain parts of the world.

All members of the social entity where social capital resides can “tap into” the resources derived from social relationships without the necessity of having participated in the creation of those relationships. In this case, relationships although built by particular individuals can benefit all members of a social group (Fukuyama, 1995). When social capital is a public good, any member of the group may no longer restrict access to it. This communitarian view is an export from the political science domain and considered *a-rational* (not necessarily irrational) and it rejects the project of reducing human behaviour to the maximisation of utility (Fukuyama, 1995; Di Ciaccio, 2005). In affirmative, Casy (2002) observes that accumulation of individual connections create benefits for the entire community in the form of bonds of trust and higher levels of cooperation.

In this view of social capital as a public good, community members are obliged to watch the disruptive impact of deviant behaviour (shared costs) and make it their common interest to impose social sanctions on deviants in the social exchange domain. The fear of denial of access to social capital by other community members becomes a motivation for each member to observe the cooperative standard. At its core, social capital is a set of institutionalised expectations that other social actors will reciprocate cooperative overtures of good will, which may include *sympathy, trust, forgiveness, help* and others (Alder and Kwon, 2002).

Social capital - a private good?

The second main school has grown mainly out of the work of Bourdieu (1986:p248) who defined social capital as "... the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalised relationships of mutual acquaintance and recognition". The focus of this conceptualisation is that social capital is a private resource that individuals can 'spend' [invest] in to better their own situations. This instrumental argument points to the assumption that individuals use their social relations primarily for personal gain although the benefits may still be available to others. However, it is assumed that those who own the social capital, control access to the social structure. As Leanna and van Buren (1999) observe, owners of social capital are the *primary* beneficiaries and others who have access are the *secondary* beneficiaries. This implies that 'right connections' may allow certain persons (primary beneficiaries) to gain access to profitable public contracts or other jobs and bypass regulations binding on others. *Individual* social capital in such instances consists of one's ability to undermine 'collective' social capital –defined as civic spirit grounded on impartial application of the laws (Portes, 2000).

Private social capital in multiplex relations and human action

Private social capital can be characterised by *multiplex relationships*, which is the degree to which two actors may be linked by more than one type of relationship e.g. friend, business associate, neighbour, brother or sister. In the case of deviant behaviour, multiplex relationships add an additional cost for a deviant. Grootaet and Van Bastelaer (2002:p8) working with multiplex relations in rural development, report; "In rotating savings and credit associations, the costs of default include social mechanisms that extend beyond the domain of the association into community-wide sanctions which affect every aspect of individual's social and economic life". Acting unethically/opportunistically toward a business partner will

also affect friendship when the relationship is multiplex. Typically, multiplex relationships will be strong ties, although strength is not necessary for multiplex relationships to occur and vice versa (Brass, Butterfield and Skaggs, 1998). Nonetheless, social capital as a private good enjoins individuals to cultivate it consciously by investing in its accumulation. Aoki (2001:p209) in her definition of social capital implies this belief

Social capital refers to the present-value sum of future benefits, including intangible goods such as status, social approval and emotional stability that individual agents expect to derive from cooperative association with the community in the social exchange game”

It is evident in the definition that an individual will be obliged to cooperate because of projections of personal benefits they can make, a view also supported by Bourdieu (1984). Coleman (1990) however, projects a contra view and conceives social capital as largely unintentional outcome of social processes.

Social capital: Actual and potential benefits

Kosova and Roth (2003:p300) have characterised social capital as possessing actual and potential value. “...the sum of actual and potential resources that social actors can mobilize for achieving their goals and that are available to actors because of their social relations with others.” Actual and potential resources implies that one needs to be pragmatic to harness social capital but at the same time be strategic and trust that he/she will benefit from future relations. Prevalence of *trust* among social relations is the instrumental element in social capital to engender transaction cost reduction. “Trust is one party’s willingness to be vulnerable to another party based on the belief that the latter party is competent, open, concerned, and reliable” (Coulson, 1998:p14). It is the confidence one will have that the other person will act to fulfil their obligations without resort to sanctions and that he or she will act in predictable ways. Trust can exist at multiple levels of society as Fukuyama (1995:p26) observes “... embedded in the smallest and most basic social group [micro], the family, as well as the largest of all groups, the nation [macro], and in all other groups in between”. This

hierarchical aspect of social capital is in line with Kosova and Roth (2003:p301) integrative definition that conceptualises social capital as:

...the potential value arising from certain psychological states, perceptions, and behavioural expectations that social structures form as a result of both their being part of social structures and the nature of their relationships in these structures.”

Thus from the eclectic definitions of social capital above the following definition is distilled to be used in this study

Social capital is a resource, actually or potentially available to an individual or group due to their social ties with others as individuals or groups who share norms, values, expectations, and understanding.

The following are key elements within the definition:

Resource - refers to stock or supply one or a group of people can draw upon or receive. It includes among others intangible goods such as status, social approval, forms of goodwill such as forgiveness, favours, sympathy, trust, and information. These often concealed benefits may be the most valuable resources social network can bestow on a member. Other resources are jobs, contracts, tangible goods such as money and materials, which may be a consequence of the first set of benefits.

Group - is broadly used to include geographical group (e.g. people of a given county or physical space), professional group (people of the same occupation –engineers or members of an association), social groups (e.g. families, clans, tribes, settlers, church or religious based, groups of friends, old students).

Social ties –refers to informal personal relationships. These range from a dyad to networks, from simple one area (e.g. kinship) to multiplex (e.g. a mixture of kinship, friendship and business partner), from ego-centric network (personalised) to communality network (depersonalised, based on mere belonging). *Networks* are personal relationships which are accumulated when people interact with each other in families, workplaces, neighbourhoods, local associations and a range of informal and formal meeting places (ABS 2000; Harper 2000).

In order to breakdown social capital concept towards elements that are more amenable to measurement, the discussion that follows is centred on *dimensions* followed by *forms* of social capital.

Social capital concept: Dimensions for operationalisation

A number of authors have suggested dimensions that can be broken down further to enable measurement of social capital (Harper 2000; Alder and Kwon 2002; Grootaert and Van Bastelaer 2002). For example, the National Statistics of the United Kingdom (ONS UK) uses the following: (i) social participation, (ii) social networks and social support, (iii) reciprocity and trust, (iv) civic participation, and (v) views of the local area (Cote and Healy, 2001; Harper, 2002). Categorisation along these five dimensions is to establish “...*stock* or *supply* that can be drawn upon” [emphasis added] (Harper, 2002).

On the other hand, Grootaert and Van Bastelaer (2002:p3) working on a World Bank initiative for *Understanding and Measuring Social Capital*, developed three dimensions; *scope* (or unit of observation), *forms* (or manifestations), and *channels* of social capital through which it affects development. Their objective was “...to assess the impact of social capital on effectiveness of development projects...”

The researcher finds scope, forms, and channels, the three dimensions by Grootaert and Van Bastelaer (2002) more useful for this study; and is broken down further in order to use them to assess the moderating effect of social capital in the interaction of institutions and their influence on public sector outsourcing process.

Scope of social capital

The scope dimension of social capital refers to the unit of observation. Such units include primary local associations of individuals or households or larger units such as market, hierarchical, and meso level social relations.

In his seminal book on civic associations in Italy, Putnam (1993) looked at features of primary social groups as being beneficial both to the participants and to the community as a whole. This *micro* level of social capital has come to be described as *bonding social capital*. Its constituents are strong bonds shared between *co-identifying* individuals of similar socio-economic characteristics. It typifies relationships within family, ethnic or religious groups. There are often high levels of trust especially within a sectarian community, or a minority group who perceive themselves to have suffered (or suffering) from some sort of exclusion or the other; and therefore consider reciprocity as a matter of survival rather than development (Casy, 2002; Pelling and High, 2005). Although Putnam (1993) originally envisaged that bonding social capital among these closely knit social groups as having beneficial externalities, others have identified negative externalities of even extreme cases such as ‘*mafia*’ shadowy groups or *interahamwe* of Rwanda who committed genocide (Grootaert and Van Bastelaer, 2002).

Strong bonding ties are essentially conservative, accruing when individuals withdraw from maintaining associations with the wider society and turn to close-knit groups. This is supposed to protect group members from exposure to perceived external risks (Bresnen, *et al.*, 2005). Bonding social capital also tends to reinforce views that the other groups and the wider society cannot be trusted in social or economic exchange, leading to fragmentation of society, slowing down the flow of information and undermining wider collective action. Societies dominated by bonding social capital exhibit interest group politics, lobbying and cartel economics (High and Pelling 2005; Olson, 1982).

A broader unit of observation beyond primary groups of family, clans, and ethnicity was implied by the work of Coleman (1990). Coleman considered a variety of entities at the *meso* level, which consist of aspects of social structure (Grootaert and Van Bastelaer, 2002) such as market, hierarchical, and social relations (Alder and Kwon, 2002). This *meso* interpretation of

social capital tends to focus on *vertical* as well as *horizontal* inter-group relations. The social capital is characterised by *weaker*, less dense but more crosscutting ties between people with common interest or goals but who may be of contrasting social identity or backgrounds. Harper (2002) refers to the *horizontal* relations as *bridging social capital* among business associates, acquaintances, and friends from different ethnic groups, friends of friends or kinsperson, government bureaucratic colleagues, and others in this category.

Vertical associations are characterised by hierarchical relations and unequal power distributions among members of networks forming *linking social capital* (Grootaert and Van Bastelaer, 2002; Harper, 2002). Linking social capital is sometimes treated as a sub-category of bridging ties and takes a vertical direction crossing boundaries such as social classes. For example, business or political elites and peasants relations; or community groups and donors relations (Harper, 2002; Putman, 2000, Pelling and High, 2005) may constitute *linking* social capital. It can also happen between political and bureaucratic elites and their ties to local entrepreneurs trading with local governments.

Linking social capital offers a potential distinction concerning informal relations, which opens up issues of power, patronage and corruption. According to Pelling and High (2005), societies rich in linking capital benefit from active pathways for facilitating the transfer of goods and information up and down the social hierarchy. However, such relations are liable to have difficulties in maintaining social trust and cooperation. In unequal patron-client relationships, clients have an opportunity to leverage resources from the hierarchy. Clients may be vulnerable to exploitation and dependency, as they may have limited scope to impose sanctions on patrons (High and Pelling, 2005). They (clients) can nonetheless employ ‘weapons of the weak’ such as negative gossip, slander, other forms of inflicting damage on ones’ reputation and ‘gorilla tactics’ (Scott, 1985).

The fourth sub-dimension of scope of social capital is conceptualised as transcending social domain to include political environment at the *macro* level. One can match it with the ‘societal’ embeddedness of institutional hierarchy examined in section 2.2. Social capital at this level includes

...social and political *macro* environment that shapes social structure and enables norms to develop. In addition to the largely informal, and often local, horizontal and hierarchical relationships and structures, such as political regime, the rule of law, the court system, and civil and political liberties” (Grootaert and Van Bastelaer, 2002:p6).

The equilibrium of *bonding*, *bridging*, and *linking* including *macro* social capital of a society can spell social fragmentation if there is dominance of bonding social capital or cooperation if dominated by bridging social capital or a tendency towards exploitative and corruption ridden society if linking social capital predominate. The balance between bridging, bonding and linking capital tend to be context specific with complementarities and substitutions. For example, local associations can sustain regional and national institutions; while strengthening the rule of law can result in better-enforced formal contracts. Strengthening rule of law can at the same time render reliance on reputation and other informal ways of supporting economic transactions and resolving conflicts less critical (Grootaert and Van Bastelaer, 2002). Whereas scope of social capital dwells on its spread; from micro situations to macro environment, its forms explain its manifestations.

Forms of social capital as an explanation for human actions

Literature is varied on different forms of social capital. While Grootaert and Van Bastelaer (2002) identify two – structural and cognitive, Nahapiet and Ghoshal (1998) recognise three – *structural*, *relational*, and *cognitive* social capital. These manifestations are discussed in turn.

Structural social capital is embedded in practices and institutions. It “...facilitates information sharing, collective action and decision-making through “...established roles and social networks and other social structures supplemented by rules, procedures, and precedents” (Grootaert and Van Bastelaer 2002: P2). Nahapiet and Ghosal (1998) identify three key

elements of structural social capital as network *ties*, network *configuration*, and *appropriable organisations*. Structurally, “who you know” affects “what you know” and can affect “what you achieve”. As Alkon and Kwon (2002) have observed that human capital⁸ is important but the extent of its achievement may depend on the social ties it inherits or can create.

However, while network ties are important *per se*, the properties of the structure in terms of density, connectivity, and hierarchy are vital for flexibility and ease of information access provided by network members. It is also noteworthy that organisations created for one purpose can produce vital externalities for the other. For example, trust from family and religious affiliations can be utilised in business exchanges. “Such appropriable social organisation can provide ...network of access to people and their resources...” (Nahapiet and Ghoshal, 1998:p253). Structural social capital is a relatively objective and externally observable construct.

Relational social capital is jointly developed and utilised when individuals collaborate in a specified field or activity. *Trust, norms, obligations, expectations, and co-identification* are conditions for exchange in many ways. Trust lubricates cooperation and cooperation breeds trust leading over time to generalised norms of cooperation. “A norm exists where socially defined right to control an action is held not by the actor but by others” (Nahapiet and Ghoshal, 1998:p255). Co-identification is an attitude of ‘oneness’ among people of the same social network and smooth many exchanges including ability to keep obligations and expectations.

On the other hand, *cognitive* social capital roughly refers to shared understanding important for social interaction and innovation. *Shared language and vocabulary (codes)*, including *collective narratives* constitute facets of shared cognitions that facilitate creation of social

⁸ **Human capital** refers to the stock of skills and knowledge embodied in the ability to perform or the skills and knowledge gained by a worker through education and experience

capital. These identities may explain the co-identification of individuals and accessibility to people and their information. Where language and codes differ among individuals or groups, this restricts meaningful exchanges necessary for shared understanding that feeds into shared norms, values, trust, attitudes, and beliefs (ibid).

In a workplace environment, cognitive social capital "...is the individual co-worker's perceived value of being part of a larger community such as a professional group, a project team or a department sharing its know how and expertise (Styhre, 2008). It is therefore a more subjective and intangible concept Uphoff (2000) in (Grootaert and Van Bastelaer, 2002) which confers individual and collective benefits for development, the channels of social capital.

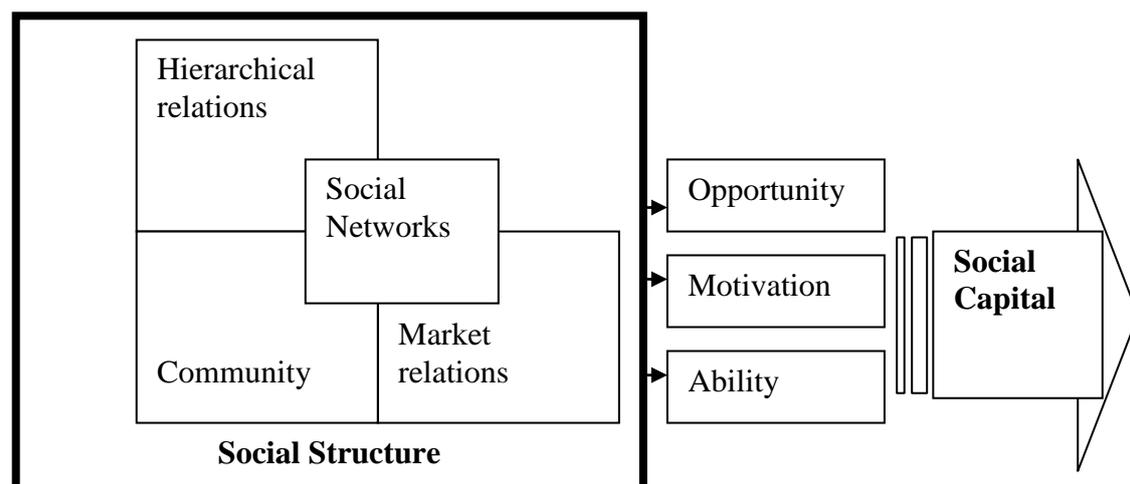
Channels of social capital

Channels of social capital refer to a stream of benefits through which it affects development. These channels according to Grootaert and Van Bastelaer (2002) are *information sharing*, *collective action*, and *decision-making*, including reduction of opportunistic behaviour. Empirical studies have shown that social capital in terms of rational economic explanation is a transaction cost saving device. As was pointed out earlier, where markets do not function and government coordination does not work, private collaboration offers a high cooperation rent (ibid) and offers competitive advantage to a firm or individual (Styhre, 2008) through increase of the availability of information. Participation in local networks and attitudes of mutual trust reduce opportunistic behaviour by community members. It is noteworthy however, that in settings where certain behaviour is expected from individuals for the benefit of the group, social pressures and exclusion can induce these individuals to provide expected behaviour even when it is in conflict with a formal role (Ocheje, 2001; Grootaert and Van Bastelaer, 2002). But what are the sources of social capital?

Sources of social capital

Time and space to meet together present opportunities for social capital creation. However, actual creations depend on whether such interactions translate into mutual understanding and trust (Styhre, 2008). As already pointed out, social capital resides in the structure within which an actor is located. Conceptually, Alder and Kwon (2002) recognise three sites where social capital can be created, each rooted in a different type of relations as depicted in figure 2.5 below. The model shares some features with figure 2.1, where it was demonstrated that social capital has linkages with informal relationships (World Bank, 2003). It also has direct relevance to the analytical framework (chapter 4) for this study.

Figure.2.5: Social structural sites for social capital generation



Source: Modified from Alder and Kwon (2002) and Watson, et al (2005)

The model depicts that within a social structure there may be: (1) *hierarchical relations*, in which obedience to authority is exchanged for material, spiritual security, and other gains, (2) *general social relations* in the country, in which favours and gifts are exchanged, and (3) *market relations*, where money is the medium of exchange of goods and services but sometimes-barter trade. Whereas, social relations form the core source of social capital, other relations contribute indirectly in so far as they provide opportunity for repeated interactions.

Alder and Kwon (2002) further observe that the extent of utility of an actor's network ties within social structure is a function of *opportunity*, *motivation*, and *ability*. Social ties create opportunities for social capital transactions and these ties may be internal or external to an individual's network. They provide opportunity to leverage their direct and indirect contacts' resources. In the case of direct contacts, the quality of the constituent ties (frequency, intensity, multiplexity and others) and their configuration matters (ibid). Entrepreneurial individuals will take advantage of their direct contacts to mobilise resources and even those of their contacts can be used to mobilise from outside the entrepreneurs' immediate network. However, the next question is what would motivate donors to help recipients in the absence of immediate or certain returns as is characteristic of social capital transactions?

There is debate as to what actually *motivates* donors in relations mediated by social capital transactions. Portes (1998) and others (Baker, 1990; Pennings, *et al.*, 1998) advance on two possible trajectories. The first is an individual's lifelong socialisation which is reinforced by a norm of reciprocity in the belief that human kind has a shared destiny with others. This normative view of social exchanges is generalised reciprocity that does not expect direct and immediate return but somehow expected down the road directly or indirectly. The second motivation is inspired by rational calculations of instrumental nature based on norms of obligations created in the process of social exchange. This instrumental motivation is of interest to this study as actors in public outsourcing of construction projects can draw on it and bracket it in their rationality. Generally, both types of motivations –normative commitments of less directly instrumental nature such as norms of generalised reciprocity and those from rational choice school coexist in society. Nonetheless, both sources of motivation rely on social norms of trust and reciprocity.

Consideration of ability in social capital transactions is based on understanding that human capital matters. The competencies and resources of contacts are important in detecting potentially mobilizable resources in addition to motivation and opportunity "...The share of

those potentially mobilizable resources they [members of a social network] receive depends on their contacts' *motivation*, and the total amount actually mobilized depends also on the *opportunity* created by the number of these contacts” (Alder and Kwon, 2002: p27). This understanding to some extent explains why social capital is an important factor in public sector outsourcing. It becomes more important where the public regulatory regime of institutions is weak. The tendency to invest in social capital is stronger when formal institutions are weak and social capital especially that arising from bonding almost ceases to matter when formal institutions are strong (Ahlerup, *et al.*, 2007). High generalised trust in formal institutions (institutional trust) –trust in technical experts and efficacy of governmental organisations by citizens can reduce the valence of bonding social capital at the macro level. Generalised trust can be a national culture but culture is outside the purview of this study. Instead we conclude the review of theoretical concepts with a discussion of contracts which are usually a culmination of economic exchanges.

2.9 Many contracts, one economic transaction

This section aims at explaining the various forms of contracts actors in economic exchanges engage in. The discussion can illuminate further various calculations that rational actors model in their decision making and actions.

In neoclassic economic terms, contract specification (in public sector outsourcing - see next chapter) and the bidding process resemble an *auction*. Features of the market are introduced in public services aimed at improving efficiency and lowering of transaction costs (Hirsch, 1995; Cannon, *et al.*, 2000). In reality, according to extant literature, a number of contractual dimensions emerge in parallel during this process, some purely legal and others social since any interaction among people will always have social implications (Granovetter, 1985; Jessop, 2008). Below these dimensions of contracts are discussed.

The *legal* dimensions of contracts emphasise formality. Contractual agreements formally incorporate the expectations and obligations of parties in an exchange relationship to create legal bonds to this extent. The more detailed the specifications of roles and obligations the less flexible and more constrained in contract's adaptive properties to uncertainties of contracting (Cannon, *et al.*, 2000). This model of a pure legal bond fails to capture the "... possibility of activities which in principle are non-contractible, including aspects of the process of production" It fails to recognise fundamental uncertainty according to Dequench (2001). Since no process can eliminate fundamental uncertainty and human rationality is bounded, such contracts are often inadequate in serving the purposes they are set for (Hodgson, 1998, Teicher, *et al.*, 2006). It ignores the necessity of some non-contractible relations, involving norms and informal rules. In other words, legal contracts are inherently *incomplete*.

The *social* aspects of the contract relate to norms defined generally as shared expectations regarding behaviour. The norms reflect the expectations about attitudes and behaviours that parties have in working cooperatively together to achieve mutual and individual goals (Cannon, *et al.*, 2000; Svara, 2005; Rakodi and Leduka, 2003; Coase, 1998, Kerstholt, *et al.*, 1995). Relational contracting norms encompass the spirit of trust, sentiments of shared expectations, which include flexibility, solidarity, mutuality, harmonisation of conflict and restraint in the use of power (Micneil, 1980 cited in Cannon, *et al.*, 2000). Together, these cooperative norms define properties that influence adaptations to dynamic market conditions and safeguarding the continuity of exchanges subject to task ambiguity unlike in a strictly legal bond. Such contracts benefit from social capital. However, the formal procedures prescribed in public procurement regulations often proscribe close and informal contacts between principal and agent in order to minimise possibility of corruption. Whether and to what extent informal contacts take place in public sector outsourcing is an empirical question. That is why part of this study investigates whether or not informal contacts and agreements

take place in public sector outsourcing? What is actually their influence in the outsourcing process? The next chapter will discuss outsourcing of construction projects and the points of possible influence of institutions will be pointed out.

2.10 Summary and conclusion of the chapter

The chapter has reviewed literature on institutional theory and argued that institutions matter. They influence actions of actors through their contribution to simplification of otherwise complex situations in which actors both in public and private sectors find themselves in their decision-making. Due to this assumption of bounded rationality and the possibility of opportunism among actors, institutions are devised by human beings as devices to reduce these uncertainties. Public policy reforms such as outsourcing including laws and regulations aim at controlling opportunism both *ex-ante* and *ex-post* in economic transactions.

However, informal institutions mainly devised or evolving outside the purview of the state and rarely codified tend to interact with the formal rules and organisations with unpredictable outcomes. The interaction is mediated by transaction costs and benefits calculations as each institutional regime, formal or informal, generates different array costs and benefits. The real mediatory mechanism of transaction costs arise from characteristics of economic transactions such as high *asset specificity* or *non-asset specificity*, low or high environmental and behavioural *uncertainty*, and the *frequency* of transactions or interaction density. These variables together with actors' rational calculations will influence choice of governance structure to be more or less formal. It is argued that actors will exercise some form of 'forum shopping' between formal and informal institutions preferring a mix that lead to maximum net utility gain. Due to this understanding, it is argued that rationality is plural as actors expand costs and benefits beyond material ones assumed by the neoclassic economics. This study covers only social capital besides material costs and benefits. In this plural form of rationality, actors' utility function brackets in both material and social costs and benefits.

What conclusions and gaps from the literature?

Institutional framework is context specific and to understand its influence in governance or economic development or on any process is an empirical question. Most studies have been carried out mainly in OECD countries and more recently in Eastern, Central Europe, and China, but very limited studies in other developing countries especially sub-Saharan Africa and indeed Uganda. Many studies again have tended to be multi-sectoral, or focus exclusively on use of institutional theory to study public policy reforms; others in less abundance have used social capital theory. Studies that have examined specific sectors as public construction projects incorporating dynamics at the service points of delivery are limited. More limited are studies that sought to bridge the institutional theory and social capital theory streams of literature. Research with an integrating framework of institutional and social capital theories to study public policy implementation, in particular construction projects are generally absent.

It is also noteworthy that many of the previous studies have assumed only the private sector seller or contractors operate opportunistically; pursuing self-interest with guile and experiencing information advantages over the buyer. This assumption informs many prescriptions for caution in contracting decisions and arrangement. The possibility of opportunistic behaviour on the part of those who act on behalf of the public client is less examined.

Overall, the chapter attempts to bridge the two streams of literature to enrich the explanation of how and why transaction costs and benefits computations by decision makers influence their actions. The thesis contributes through dimensionalising both institutions and social capital to operationalise these concepts for deeper analysis of their influence on actors' behaviour and actions in a particular context. The hypothesis drawn in chapter one is based on this understanding derived from the literature so far reviewed. In this project, comfort is taken from North's assertion

...human environment is divided by social scientists into discrete disciplines –economics, political science, sociology –but the *constructions* of the human mind that we require to make sense out of the human environment do not coincide with these artificial categories. Our *analytical frameworks* must integrate insights derived from these artificially separate disciplines if we are to understand the process of change. Moreover we must understand what is the underlying force driving the *constructs* that the mind makes (2005:p11).

Institutional and social capital theories are applied to public sector outsourcing of construction projects.

In conclusion, the principal argument of this chapter is that institutions and social capital considerations matter in economic transactions, which resonate with Gilfford's warning not to "...assume that individuals enter into transactions in ...atomized and anonymous social environment of neoclassical economics..." (ibid: p13) but instead assumes that human action in economic transactions is embedded in concrete, ongoing systems of relations in a social structure situated in a spatial and temporal context (Granovetter, 1985; Hogson, 2007; Gilfford, 2009).

The next chapter turns to literature on the study problem area, outsourcing of public construction projects.

CHAPTER THREE

OUTSOURCING PUBLIC CONSTRUCTION PROJECTS

3.1 Introduction

In the previous chapter, the literature review centred on institutions and how through their effect on actors' transaction costs computations can influence decision-making and actions. The literature also highlighted how and why social capital costs and benefits calculations can alter the utility function of actors and therefore their overall behaviour and actions particularly those in the public sector.

This chapter focuses attention on the process of public sector outsourcing of construction projects with a view of identifying decision and action points where institutions and social capital matters in order to influence the total process of outsourcing construction projects. The first part of the chapter underscores the importance of the construction industry and its general characteristics from international literature; the second defines construction projects, their types and dominant actors. The third part turns to outsourcing as government mechanism for improved service delivery, and why it has become a target for increased regulation in the recent past. The fourth part points to leverage points at which institutions and social capital matter followed by a summary and conclusion.

3.2 Cycles in construction industry

Construction projects can best be conceptualised in the context of entire construction industry and indeed for a particular political-economic environment. All fields of human endeavour benefit from construction and it "...is responsible for many of the noblest works –and for some of our most humble...the constructed environment is among the most ubiquitous and pervasive factors in our lives" (Barrie and Paulson, 1992:p3). This assertion underscores the importance of the construction industry in many economies. From using the construction industry as a barometer of the health of an economy, to deliberate injection of resources as

part of stimulus packages to revive struggling economies, construction industry can be "...a paradox in many ways" (ibid: p6). For some economies, it is the largest single sector employer, with its share of the Gross Domestic Product (GDP) ranging from 5-20% (being higher in developing countries). Typically, large numbers but small size businesses dominate construction industry. The industry is generally fragmented, often very competitive and divisive environment (Sharjabi 1991; Barrie and Paulson 1992; Winch 2002). Yisa *et al* (1995) have observed that traditionally, construction industry has been dominated by family businesses from generation to generation. Even large firms in many countries trace their origin to family businesses.

The structure of the industry "...is highly specialised and layered, with complex interlocking interests and traditions. Its character makes it highly effective on practical or project matters, yet often ineffective on general or program matters" (ibid: p6). Some authors (Barrie and Paulson, 1992; Yisa, *et al.*, 1996) have attributed the tendency to focus on the *practical* –the next project to win, and less on the *overall strategy* due to pre-occupation with survival, occasioned by too much competition, fragmentation and divisiveness in the industry. Furthermore, Yisa, *et al.*, (1996) argue that in general, contractors assume that good work alone will attract new jobs and therefore little attention has been paid to "...develop and integrate marketing...strategic planning ...activities into their organisational framework..." (ibid: p50). Due to this general lack of firm level strategy, limited research has gone on. "...[O]nly a fraction of 1% of the industry's gross revenues is invested even in applied research, let alone basic research ...[R]eluctance to invest [is]...in part because "better ideas" disseminate rapidly through industry" (ibid:p6-7). The innovations are not a result of research and "...cannot be protected either by secrecy or patents..." (ibid: p7). This lack of strategy has also been attributed to the nature of firm ownership. As mainly family businesses "passing from one generation to the next...many heads of these companies are conservative

and sceptical [of] changes and still remain loyal to traditional methods passed down by their ancestors” (ibid: p50).

Many commentators on construction sector regard it as a *project-based* industry per excellence (Sharjabi, 1991; Moris, 1994; Yisa, et al., 1996; Winch, 2002; Turner, 2004; Ndekugri, *et al.*, 2007). As Sharjabi (1991:p14) observes

One clear feature of construction industry is that it is a project based industry. Discrete projects of varying duration, type and size are executed on geographically dispersed locations by different firms. The majority of the projects are tailor-made to satisfy the need of their clients...”

This organisational feature of the industry as project-based leads to a number of characteristics of the industry as discussed in the next section.

Construction cycles: industrial and project related

Construction happens within two cycles. One cycle relates to construction as part of the general and significant activity of the economy, and two, its own inherent life cycle as a project. We discuss each in turn beginning with the general construction cycle (as a sector) and then the construction project cycle.

General industry cycles

In advanced economies, each year “...about 50% of capital invested in assets is spent on construction, and around 70% of the stock of assets is constructed facilities” (Winch, 2002: p26-27). Construction volume is often in tandem with the general health of an economy which goes through periods of expansion and contractions or chronic seasonality; sometimes localised and other times wide spread. Barrie and Paulson (1992: p7) in this connection have described construction cycles as an “...amplified reaction to basic business and economic cycles.” Part of the explanation for this behaviour of the industry lies with the comparatively large numbers and small sizes of its businesses chasing a few clients –it is generally a *buyers’ market*, as was discussed in the previous chapter. In addition, the construction industry lacks rapid mobility of resources and the industry largely exhibits asset specificity resulting in high

transaction costs, suffering ‘localised recessions’ or ‘booms’. Whereas there may be too much work in some regions, at the same time other places may be suffering “localised recessions” (ibid: p7). Government fiscal and social policy can also aggravate these cycles. In almost similar manner, single projects also experience a similar cycle in terms of level of effort and resources committed to a project.

Construction work as project cycles

The second cyclic element relates to construction as a project-based industry. Attention turns to this type of cycle in this sub-section beginning with the definition of a construction project. Details of a construction project cycle are discussed in section 3.4.

The Project Management Institute (PMI) in their book, *The Guide to Project Management Body of Knowledge (PMBok)* defines a project as a “temporary endeavour undertaken to create a unique product or service.” (PMI, 2004: p4). The PMI further interprets temporality as having a definite beginning and definite end, whether in weeks or in months or even years (ibid). The uniqueness of a product or service means it is different from all similar products or services. As an adage goes in construction industry; “While other industries develop prototypes...there are no prototypes in construction industry –only individual buildings constructed ‘from scratch’” (Styhre, 2008:p944).

Most definitions of a project appear to emphasise the finiteness and uniqueness of projects with predetermined set of objectives at its inception. However, the same consensus achieved with the definition of a project appears to be lacking for the term ‘construction’ project. A generally agreed definition of construction project is challenging to arrive at (Winch, 2002). This is mainly due to varying perspectives of specialised skills and professions who make their own description from their specialist points of views. This produces a certain amount of confusion. Besides, construction involves a wide range of activities that make the industry’s external boundaries rather unclear (Murdoch and Hughes, 1996). For example, are material

suppliers and transporters part of construction industry? Sometimes even the starting point of a construction project is controversial among various professions.

A contractor, for instance, may assume that a project begins from the day of mobilisation to the site through to the handover (Gidado, 1996) and yet, from the point of view of the owner, the project began with the strategic considerations that led to conception of the project idea. “Peter Morris argues strongly that project management is about the total process, not just realising a specification to time, cost and quality” (Winch, 2002:p8). In this connection, Cooper, *et al.*, (1998) had earlier observed; “In construction industry the definition of a project has traditionally been synonymous to actual construction works” (ibid: p3). The pre and post-construction activities have tended to be sidelined and were often accelerated to reach the construction stage or move on to the ‘new job’. As a result, client requirements were poorly defined (ibid).

Therefore, in defining a construction project, it is important to assume a particular point of view. This study assumes the point of view of the owner and it is this perspective the entire study is based. The owner’s point of view is more encompassing, determinate, and covers the entire scope of the project to which all other specialists and professions contribute to at different times during the construction project life.

In this regard, Hendrickson and Au (1989:p1) justify;

By adopting the viewpoint of the owners, we can focus our attention on the complete process of *project management* for constructed facilities rather than the historical roles of various specialists⁹ ...each specialty has made important advances in developing new techniques and tools for efficient implementation of construction projects. However, it is through the understanding of the entire process of project management that these specialists can respond more effectively to the owner's desires for their services, in marketing their specialties, and in improving the productivity and quality of their work.

Owner’s point of view and objectives are superior since once achieved, or becomes clear that they will not be achieved, the project is terminated. The owner’s point of view of the project

⁹ *Specialists* such as planners, architects, engineering designers, constructors, fabricators, material suppliers, financial analysts and others

life cycle, especially of a public client, is developed further in section 3.4 below the discussion turns to definition of construction.

The term 'construction' refers to "... erection, repair and demolition of things as diverse as houses, offices, ships, dams, bridges, motorways, home extensions, chimneys, factories, air ports" (Murdoch and Hughes, 1996: p1). However, Barrie and Paulson (1992) link the term construction to designer's output. "Construction is the process whereby designers' plans and specifications are converted into physical structures" (ibid: p18). Taking cues from these two definitions of construction and juxtaposing the definition of a project from the PMBoK, this study therefore defined construction projects as

...discrete endeavour undertaken to create a physical product within a specified time to satisfy clients' needs

This definition matched with internationally accepted conceptualisation of projects by PMI (2004) and the researcher adopted it for this study. In addition, according to literature, all projects exhibit certain common attributes as outlined below:

1. Involves the investment of scarce resources often of significant proportion of the client's investment and the contracting firm's workload, with serious consequences if things go wrong (Sharjabi, 1991)
2. Can be planned, financed, and implemented as a unit (Potts, 2002).
3. Has defined set of objectives and specific start and end dates (PMI, 2004).
4. Vary in duration, size and type executed on geographically dispersed locations by different firms (Barrie and Paulson, 1992)
5. Use temporary organisational teams and usually performed under contract or several of them which also serve as instruments for risk sharing (Winch, 2002)
6. Each project will have a unique mix of discrete skills, technologies and resources (human and non human) which are brought together to focus the project objectives (PMI, 2004)

7. Have a project life cycle. Not only are projects finite, but have a distinctive and unique life cycle broken down into phases as shown in figure 3.5 below with a full discussion of *project life cycle* in section 3.4. The activities and resource inputs change as the project progresses through the project phases.
8. Projects experience progressive elaboration (or reduction of uncertainty) of specifications through time. Beginning with broad and general specifications in the early phases of the project when information is still limited (with maximum uncertainty), more details are developed or emerge as the project progresses and more information is realised (Cusworth and Franks (eds.) 1993, Winch, 2002, PMI, 2004).

These characteristics can vary according to the types of projects under consideration as discussed in the next section.

3.3. Types of construction projects and transaction costs

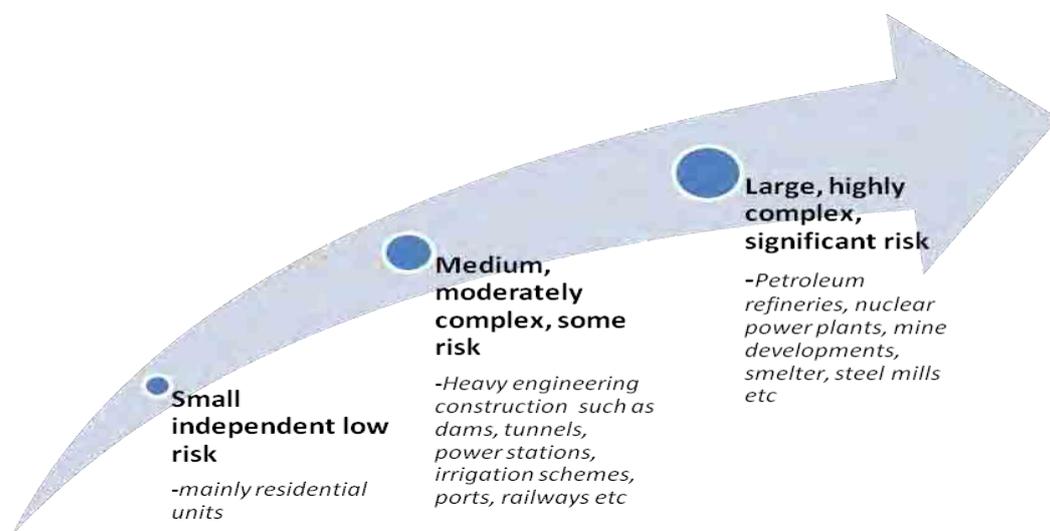
Typological classification of objects or events is only important for its intentionality (Marradi, 1990). The aim of this section is to develop a typology of projects which identifies their degree of complexity, as this attribute has been correlated with uncertainty (Geyskens, *et al.*, 2006) and therefore high or low transaction costs (Williamson, 1981).

In the literature, several classifications exist; some based on *size, source of funding, type of client, complexity, purpose of the constructed output, and actors involved*. For example, the World Bank (1984) categorises construction projects into two main classes (1) *building* which is associated with residential and non-residential houses such as schools, hospitals, factories and the like, and (2) *civil engineering works* involving the infrastructure for water supply, transport, irrigation, power generation, and so forth. In general, building projects tend to account for around 70% and civil engineering works for about 30% of construction sector's share worldwide (*ibid*). Beyond these two broad classifications by products, Robert Youker, a

retired project management expert after 35 years at the World Bank, proposes the following additional factors for project classification: *Duration, industrial sector, geographical location, and number of workers involved, cost (large, medium, or small), complexity, urgency, organisational design, private or public.* Of these traits; **size, duration, and complexity** dominate in classification of construction projects (Barrie and Paulson, 1992; Potts, 2002; Baccarini, 1996; Bertelsen, 2003; Hass, 2007; Ireland, 2007; Youker, 2007; Wood and Gidado, 2008).

A typology of construction projects detailed in appendix 3 include: (1) small independent and low risk, (2) moderately complex project, and (3) highly complex. The key point to note is that as complexity increases, actors' ability to receive and internalise comprehensive information declines raising the level of uncertainty and risk as illustrated in figure 3.1 below.

Figure 3.1: Increasing complexity of projects and risk level



Source: Adapted from Hass (2007)

According to the figure (3.1), the least complex projects are represented at the bottom and at the extreme top are large and complex projects with significant risks. As Williamson (1981) explains boundedness due to limited human capacity to gather and internalise a comprehensive set of information increasing uncertainty in decision making. Complexity

increases volume of information to comprehend. Discussed below are project categories according to their level of complexity and risk.

Low complexity projects

‘**Small independent and low risk**’ construction projects encompass residential and some simple non-residential construction. The projects range from single-family homes, multi-unit town houses, garden apartments, high-rise apartments, and condominiums, small retail stores, grade schools to health centres, hospitals, and other government buildings (Barrie and Paulson, 1992). This category of projects is characterised by a large number of very small firms of relatively low capital and technological requirements. The mix of professionals in these small businesses include engineers and consultants, though membership to their professional bodies is controlled, non-professional entrepreneurs can invade their area of business whose objective is merely seeking a living (ibid).

These characteristics allow for easy entry and exit and in general, there are few constraints to setting-up a firm to do constructing business in this sub-sector of the industry. However, few large firms participate in the ‘small independent low risk’ type of construction. There is a tendency for high rate of attrition and business failure among these small firms (ibid). Low asset specific both in terms of human skills and physical assets coupled with availability of construction equipments for hire, makes a recipe for a market dominated by buyers/clients (buyers’ market) as discussed in the previous chapter.

Moderately complex projects

The category of ‘**moderately complex**’ projects includes heavy engineering construction and some large non-residential buildings. Heavy engineering includes dams, tunnels for hydroelectric power, flood control, and irrigation. Others are land mark bridges, railways, airports, and harbours, in addition to utilities such as water treatment and distribution systems, sewerage and storm structures, power lines, and communications networks. The professionals

involved go beyond architects and engineers and include a substantial input by geologists, hydrologists, ecologists, and other specialist natural scientists. Increasingly, social scientists are involved in construction industry to advise on various stakeholder management. The construction phase is much more equipment-intensive, characterised by fleets of large earthmovers, cranes, and trucks, working with massive quantities of basic materials such as earth, rocks, and so on. Heavy non-residential construction that include commercial and government office towers, theatres, recreation centres, commercial and light manufacturing plants fall in this category (Barrie and Paulson, 1992; Bertelsen, 2003; Wood and Gidado, 2008).

Highly complex projects

‘**Highly complex**’ category of projects is mainly industrial construction dominated by the largest engineering and construction firms. These projects include petroleum refineries and petrochemical plants, nuclear power plants, mine developments, smelters, steel mills and others. ‘Turnkey’ contractual arrangements tend to be common with this type of projects (Barrie and Paulson, 1992). Moderate to highly complex projects tend to be rare unlike the small independent projects. Berggren et al (2001) have described large projects as “one night stand” implying low opportunity for repeat business. Opportunity for repeat business or *transaction frequency* is important as a countervailing measure against opportunistic behaviour (Geyskens and Kumar, 2006).

Is complexity a technical or organisational problem?

Projects tend to grow along two primary areas of complexity –*technical* and *business scope* (Ireland, 2007). *Technical complexity* concerns number of components, sophistication in terms of technology (e.g. hydraulic, electric, digital and others); number and types of interfaces, and novelty of technology. In general, the technical aspects concern the ease or difficulty of understanding a problem and solution as discussed above. In other words, it

concerns whether a solution is readily achievable using existing *technologies* or requires innovation and ‘*greenfield*’ technology. Technological complexity increases uncertainty and difficulty to write complete contracts. In addition, they also demand high level of skill speciality and particular equipment eliminating the number of potential bidders for such projects. These in turn tend to increase transaction costs (Perrow, 1967; Rindfleisc and Heide, 1997).

On the other hand, *business scope* or *management* complexity refers to schedules, cost, risk, communications, and includes aspects of “the project staff, relations of the project to others, and project organisation” (Ireland, 2007:p2). In many projects, financial arrangements for the flow of cash from one source or several sources, and the timing of availability of these funds, can add to managerial complexity (ibid). This type of complexity leads to what Winch (1988) called “organisational uncertainty” arising from tensions that build up within *project coalition* (ibid: p8). “To an extent, organisational uncertainty is a function of project size as the tensions within the temporary organisations are enhanced within larger structure” (ibid: p8).

The categorisation above, attempts to capture the whole range of construction projects. However, this typological categorisation excludes a variation that would bring several interrelated projects under programme management, another element that falls mainly under organisational complexity. This study does not focus on programme management except in so far as it relates to institutional arrangements.

Generally, at the extreme end of large projects, construction projects can be very complex. Winch (1988: p9) sums it thus;

...it can be safely asserted that at one end of the continuum, construction projects are amongst the most complex of all production undertakings. This complexity itself poses major problems of bounded rationality and there is almost certainly a strong correlation between complexity and task uncertainty...organisational uncertainty and project complexity will also be strongly correlated.”

Complexity problems can arise both *ex ante* and *ex post* to an agreement due to environmental and behavioural uncertainties (Standifird and Marshall, 2000; Geyskens, *et al.*, (2006).

Behavioural uncertainty can escalate especially if one of the transactors cannot be identified definitively which can be a common phenomenon with public clients.

Clients of construction projects

Who the client of a construction project is, can sound a mere rhetoric question since the answer seems obvious. However, as Walker (1994) observed, it can be a complex question. “On the face of it the term ‘the client’ is simple enough...but apparent simplicity hides a complex concept” (ibid: p62). This complexity is demonstrated by a litany of possible building clients by Turner (1990: p3) who observed that building clients can be categorised in many ways;

Individuals, groups or partnerships of people, corporate and public clients; clients who build once or rarely; those who build often; those who build for owner occupation; those who build for investment or as developers; those who act as agents or agencies for those who will eventually occupy the building, those clients who are combinations of the above.

One way to simplify the complexity is to identify the one who pays for the construction as the client. However, “...even within one project, not everyone works for the same paymaster” (Murdoch and Hughes, 1992:p4). This implies that whoever pays for something on the construction project is a client and therefore one can speak of ‘client systems’ or ‘client organisation’ (Walker, 1984).

A broader way to consider *client system* is to identify how overall funding for the project is organised. With this criterion, two categories of clients emerge; the *private sector* client, and the *public sector* client. The private sector clients include individuals in their personal capacities, sole business proprietors, and corporate bodies ranging from small, simply structured organisation to massive multinational companies (ibid:p65). Not for profit or non-governmental organisations may fall in this category. These can also be suppliers of services or contractors.

On the other hand, are public clients who include the publicly owned organisations such as government departments, agencies, public corporations and others. These have authority to

raise finance to commission construction work, normally by taxation or in money market on the authority of government (ibid: p67). Typically, such a *public body* undertakes construction projects to fulfil its commitments to the electorate to provide *public service*, the strategic mission of public sector. All such projects are justifiable on their alignment to organisational strategic objectives (Winch, 2002; Sifri, 2003; Morris and Jamieson, 2005; Naaranoja, *et al.*, 2007). Moreover, the question is not always ‘either or’ a project is aligned to the strategic objectives. Some are more important and others of less strategic value. An *ex ante* evaluation (appraisal) criteria is often necessary to prioritise projects with some form of ranking. Selecting projects identified need a systematic way of sorting good ones from bad ones but in practice it is sometimes lacking (Potts, 2002).

This study focuses on public sector projects since the scope of the construction industry is too broad, includes many participants, systems, and practices. Often what is going on in the public sector, especially in developing countries, sets the pace and tone with great demonstrational effect in the construction industry in general. Even among the developed countries Winch (2002: p26-27) notes

...a typical country, around 50% of construction output has state or its agencies as a client, and...many of the more inexperienced private sector clients tend to follow the state model. For civil engineering, the state is the predominant client in all countries

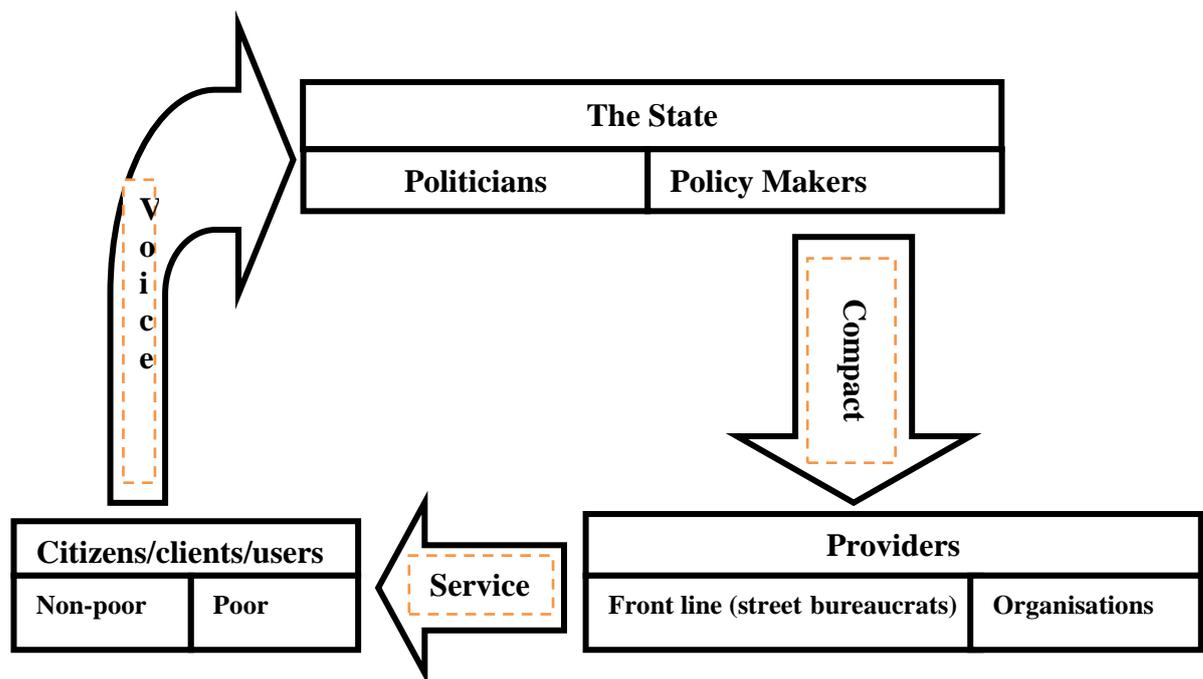
The next chapter discusses in detail the reasons for the choice of the public sector for this study, but worth noting here is that it accounts for almost 70% of the total share of the demand for construction services for many developing economies. In many of these developing countries, reforms have taken place leading to contracting out instead of using ‘own forces’ or ‘force account’. A review of this evolutionary transformation follows.

The structural evolution of a public client and formal institutions

Historically, as pointed out above, public bodies have performed both their own work and some or all of the actual construction with their own forces; this approach is often referred to as “force account” (Barrie and Paulson, 1992). The transition from force account or direct

own labour, to outsourcing under contract was mentioned in chapter two. It was inspired by the New Public Management (NPM) approaches adopted by many countries at different times in the last twenty or so years. This separation of service provision, service delivery, and service financing introduced more complexity in client systems as depicted in figure 3.2.

Figure 3.2: Government client structure in public service delivery



Source: Adopted from World Development Report, 2004

The state or government, which raises money from taxpayers, has a compact to provide services to its citizens who are the ultimate clients of all mechanisms for public service delivery. According to the *World Development Report* (WDR) 2004, a sovereign state exercises monopoly of legitimate use of physical force within its boundaries (World Bank, 2004). “From this monopoly, politicians derive the power to regulate, to legislate, to tax –to set and enforce the “rules of the game”” (ibid: p49). Politicians (sometimes the same as policy makers) “control this power and discharge the fundamental responsibilities of the state (ibid).

In a democratic government, the roles of politicians (mostly elected) and policy makers, usually appointed by politicians, operationalise the wishes of politicians. World Bank (2004:p50) states

Politicians set general directions, but policy makers set the fundamental rules of the game for service providers to operate—by regulating entry, enforcing standards, and determining the conditions under which providers receive public funds

It is the duty of the state to ensure services delivery to the people in their jurisdiction. So, under public sector outsourcing mechanism, a state department (e.g. Ministry of Public Works) and a public sector autonomous corporation (e.g. state water corporation) charged with water supply hires a private firm (e.g. a water engineering firm) to install a water gravity scheme for urban water supply under contract terms (ibid). Therefore, from the point of view of the contractor, the client organisation is the government department or autonomous corporation, but from the state point of view, the compact is with the state department. This account does not simplify the answer for who the public client for construction is. Walker (1984:p62) sheds more light;

In public sector the client may be a local authority which receives the finance for the project from central government to implement government policy, and the users may then be a third party, for instance teachers and pupils in the case of a school

So, whereas an identifiable buyer like a local government or a central government ministry may be the client, often the financier such as ministry of finance, a bank or a donor "...may reserve the right to final approval of both expenditure and aspects of design" (ibid:p63). Further complication may be subtle regarding a particular actor in the client organisation responsible for decision-making. "In particular ...should understand the decision-making mechanism of the client's organisation and where authority for decision lies" (ibid). These actors who may exercise power in overt or in covert and subtle manner influence the extent of autonomy of other actors who dependent on their decision, a phenomenon that was discussed in the previous chapter.

The mechanisms of construction service provision under public sector outsourcing brought in many more actors in the management of public construction. In some countries this has become a more efficient and effective process and in others it has increased transaction costs (Jansen, 2005). This is because as Winch (2002:p17) observes, it will "...vary from country to country depending on historical and institutional factors ..." which is an empirical question of this study. It is noteworthy that some construction projects transcend a single sovereign state jurisdiction or actors are spread in more than one country. These projects are discussed next because they tend to be common in developing countries.

Institutional factors in domestic and international construction projects

"In a highly regulated industry such as construction, and where project execution is inherently site-specific, globalisation will continue to have less of an impact than it has had in many other sectors"
(Winch, 2002:p32)

Public construction projects can further be categorised as domestic and international. 'Internationality' refers to involvement of foreign actors by way of funding, consultants, and contractors. Each class of project will attract certain dynamics because of the type of actors who tend to participate in it and the legal framework that is supposed to regulate it (Shajabi, 1991; Bunni, 2005). Because each actor may bring certain attitudes, beliefs, and limitations of information gathering and processing, one would expect variations in the institutional influences. In this connection, Winch (2002:30) has observed, "The actors in the project coalition work within the rules of the game they understand, while those rules evolve in response to new challenges." Walker (1984:p48) names the institutional forces influencing construction projects as "...professional institutions upon the activities of their members through rules of conduct, education, conditions of engagement and fee scales...parent company, head office and shareholders are institutional forces".

The forces form a 'system' as identified by Marrian Bowley in her seminal book, *The British Building Industry* (1996) cited in Winch (2002 p18). Bowley considered institutionalised sets of professional interests and a system that allocated roles and provided a framework for action

within the logic of the system. Nonetheless, Walker in the same vein observes "...an inverse of these effects overseas [developing countries] is the forces acting upon the contributors to projects in which such institutional constraints do not exist..."(ibid). These variations in context within which construction projects are outsourced and interplay of rules and actors take place, is of great interest in this study. In the next section these constraints are discussed in relation to life of a construction project.

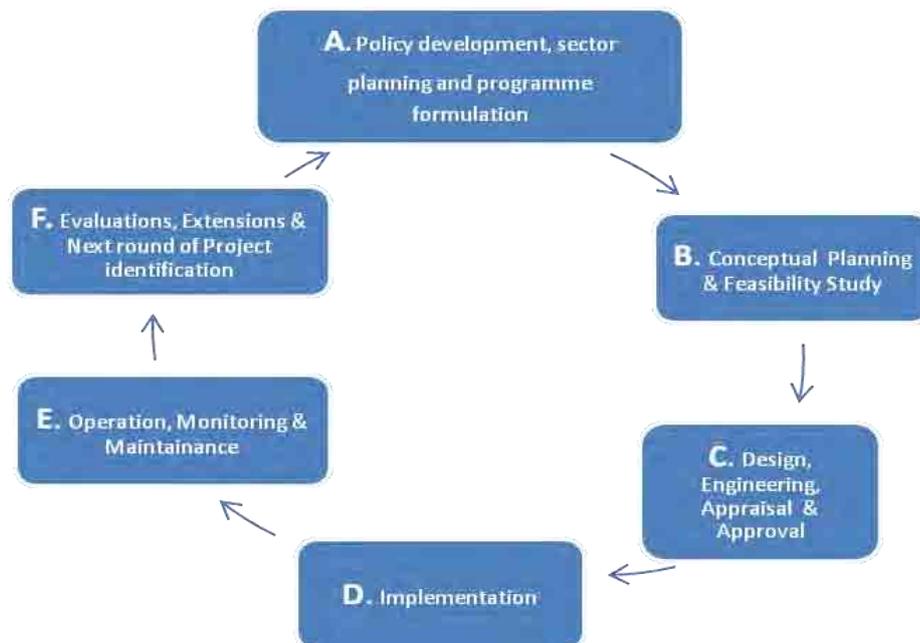
3.4 Construction project cycle - where does it life start?

As already pointed out in section 3.2, projects have a life cycle and their starting point can be contested by various specialist actors because of their differing standpoints in relation with it. It has been likened to five blind men encountering different parts of an elephant. Traditionally, the lifecycle begins from conception to implementation in a sequential way (Barrie and Paulson, 1992). This view however precludes the strategic planning of the client that led to identification of the need in the first place.

Thai (2009) opines that outsourcing particularly of building and road construction projects needs to start even before budgeting begins. This opinion resonates with Winch's view of outputs of construction projects - the *constructed asset*. He observed that a constructed asset is a major investment with long lasting influence on the quality of life and competitiveness of the business. "Such investment decisions are inherently *strategic*..." (Winch, 2002:p46). In other words, it should be started early in the client's organisational planning stages. This is important for public accountability as a basis for resource allocation to fulfil commitments to the electorate since constructed assets are only a means for higher objectives, not just for their own sake. "...governments invest in schools to provide education services, and bridges to provide transport services, firms invest in shops to provide retail services and houses to provide homes" (Winch, 2002:p5). So, actually, the construction project begins earlier during public policy and programme development.

Taking the owners' point of view, from policy and programme development, project objectives and scope are defined which are then subjected to further planning, designing, financing, constructing, and operating as styled out in figure 3.3.

Figure 3.3: Public sector construction project cycle



Source: Adapted from Mortimer (2007).

The stages in the development of public construction projects fall broadly into consistent patterns (A-F) in figure 3.3. Details can vary due to the uniqueness of each project but most importantly, the preferred way to manage the project by the client/owner. The decision making mechanisms which spell out major or “key decision points” (Walker, 1984:p113) have a determining effect on the phases. *Key decision points* are conditions where the client’s authority must be sought in order to proceed, and are often manifest in the client’s internal procedures for expenditure and similar approvals (ibid). These points are like gates through which **go** or **no go** decisions are made. For example, whereas many projects could be identified at policy development level, feasibility studies can filter many of them out and only a few progressing to design stage.

In general, the phases are sequential but if the project is urgent, the owner can ‘fast track’ by “overlapping” phases; a technique that attempts to expedite project performance in order to complete within the shortest possible time (Barrie and Paulson, 1992:p39). Typically, in fast tracking, phases or activities within phases that are non-dependent on each other, are made to occur simultaneously thus shortening the overall project time line. This may even mean outsourcing a contractor not only to build but design (design-build) as one contract; or even design, build, operate and transfer (BOT).

Often, whereas the process of the cycle appears to be linear with neatly sequenced activities, in practice, it is often *iterative*. Iteration appears to resonate with Dvir and Lechler (2004) rephrase of Eisenhower¹⁰ sublime dictum “... plans are nothing, changing plans is everything...” Changing plans is iteration. In other words, a step further on in the project cycle, can trigger insight to revise outputs of an earlier phase, because generally as the project progresses from phase to phase, also more and more information becomes available, and uncertainty reduces (Winch, 2002). This is one of the characteristics of projects discussed in section 3.2 above concerning progressive elaboration. Below phases depicted in figure 3.3 above are discussed in detail.

Expose of phases

Each phase or step (from **A – F**) in the project cycle has an output that becomes an input to the next phase as the discussion illuminates below:

A. Policy development, sector/regional planning, and programme formulation

In general, projects are identified to solve strategic problems in client organisations. This happens “Long before designers start preparing drawings, and ...well before field construction can commence, considerable thought must go into broad-scale planning” (Barrie and Paulson, 1992: p15). Hughes (1990) makes distinction between policy and strategic

¹⁰ 34th President of US stated “A plan is nothing, planning is everything”.

decisions. Policy is the trigger, which initiates the process and the terminator. “At their simplest level they can be defined as (a) the decision that a new building is required, and (b) the decision that it has been supplied, in an acceptable state, and that all related contractual obligations are discharged” (ibid:p5). While policy decision is identification of need, and strategy is on how a solution (project) fits in a given environment. A tactical decision then relates to a particular project and its work packages.

The conditions within the project environment are the triggers for project ideas. One can harness these ideas through a variety of means including various planning processes, political pressure, and the perception of opportunities and needs that “listening” may bring forth (Cusworth and Franks, 1993; Potts, 2002). “The factors determining the project environment also determine the policy environment within which the project will operate” (Potts, 2002:p15). This phase specifies the overall *strategy* of the client to which construction should have a direct relevance (Winch, 2002). For example, if there is an outbreak of cholera, which clearly links to sanitation and hygiene problems, this may call for formulation of a health improvement programme. However, there are many alternative means to achieve programme objectives and therefore the next phase (**B**) of conceptual analysis deals with this aspect (Potts, 2002).

In general, the outputs of this broad-level planning phase are public policies with proposed sectoral and/or regional development (ibid). Planners of a particular sector (e.g. health) are major actors.

B. Conceptual planning and feasibility study

This phase concentrates on identifying *feasible* (workability) projects in line with broad development programmes identified in the earlier phase. Collection and analysis of preliminary information to clarify project objectives and decide the scope (scale/size) of the project for both feasibility and *desirability* (social acceptance) happens during conceptual

analysis phase. It involves social, economic, technical, and environmental analysis to pre-determine the viability of the project. This phase considers a number of alternatives to achieve objectives in order to prioritise the one considered most desirable.

The owner or promoter (sometimes called sponsor) may engage consultants to undertake this operation. The output of this phase is usually a *conceptual* plan with clear objectives to guide design (Potts, 2002; Mortiner, 2007).

C. Design, engineering, appraisal and approval

Many architects and engineers tend to narrow design to technical issues only. Design of construction projects goes beyond technical considerations to encompass the formulation of a total solution to the client's construction needs or objectives identified at concept phase (Mortiner 2007; Barrie and Paulson 1992). Within this broad view of design, one can identify the following three components: (i) preliminary engineering design, (ii) Detailed engineering design and bills of quantities (BOQ), and (iii) non-engineering design. All of three should be clear about what the design is supposed to achieve.

i) *Preliminary engineering design or outline design* is a direct extension of feasibility studies of the previous phase. It stresses architectural concepts, evaluation of technological process alternatives, size and capacity decisions. Depending on the complexity of a project, this phase may draw in other experts beyond architects and engineers. Preliminary designs are subject to review through public information meetings and subsequently approval by regulatory authorities. In many democratic countries, this is a precondition before progressing to detailed design (Jobert. *et al.*, 2007).

ii) *Detailed engineering design* is a process of work breakdown (PMI, 2004) from the outline or general designs to specifications that can allow constructors to build the structure in the field. Detailed designs must consider recognised standards of safety and performance and a

range of specialists involved can be many including engineers (chemical, civil, electric, and mechanical), quantity surveyors, architects, interior designers, landscape specialists and others.

iii) *Non-engineering design* includes processes such as the manner of community consultation, methods of financing, procurement, approaches to institutional and legal issues, and other non-engineering but important supporting services in line with the client objectives or project mission (Mortiner, 2007). In general, designers according to (Styhre, 2008: p944);

... [B]uild up and rely on a huge body of cumulative experience of what “works and what doesn’t”, from which they are able to make “sound” judgments, not only about the design but also about the management and “politics” of complex projects

Outputs of this phase (C) are vital for client to source a capable contractor for the performance of the project in an efficient and effective manner in order to deliver value for money. Elements of the outputs may include the following: BOQs, drawings and specifications vital for actual construction are produced. The project sponsor must approve funding in order for the project to go into implementation phase.

D. Implementation

In the previous chapter, some space was dedicated to explaining the actor’s perceived transaction cost and benefits analysis in decision-making and action. However, regarding outsourcing, specific decision points at which transaction costs and benefits are of *practical* nature were not discussed. Literature abounds on the public sector’s contracting decision and the structure of contracting process (Brown and Potoski, 2005:p331). However, the application of transaction costs on *ex post* award of contract (contract administration) has been scanty (ibid). Nonetheless, Brown and Potoski (2005:p331) argue that transaction cost theory is a practical framework for analysis of a “...broad range of contracting decisions and procedures” and is also applicable to implementation phase of construction project. This study relates transaction costs and benefits to bounded rationality of actors at various decision points in public sector outsourcing process of construction projects.

Turning back to the issue of implementation, it is variously labelled ‘procurement and contracting’ (Hendrickson and Au, 1989) or broken down further to procurement, construction, and start-up (Barrie and Paulson, 1992). These labels could be confusing because hired consultants could undertake procurement or outsourcing in the earlier phases of pre-feasibility, feasibility and detailed design stages; and in all cases, contracts may have been issued. This study uses the concept ‘implementation’ to refer to the processes of converting the specifications developed at the end of the design phase into reality of a constructed facility ready for operation and utilisation. This definition is in line with the *execution* phase referred to in PMBOK of PMI (2004) and in a practical sense, it signifies that a plan which was just on paper, is now being progressed towards physical realisation. From client’s point of view, it implies that the necessary financial resources are authorised for expenditure on execution.

Nonetheless, clients can chose to implement a specified design in a number of ways. Winch (2002) identifies four as; (i) in-house sourcing, (ii) appoint a supplier, (iii) launch a *concours*, and (iv) issue an invitation to a competitive tender.

In-house sourcing

Use of in-house capability such as through hierarchy or the *force account* is outside the scope of this study or its implied comparison of ‘make-or buy decision’ process. The focus is on the *how* and *why* institutions influence the process outsourcing.

Appoint a supplier

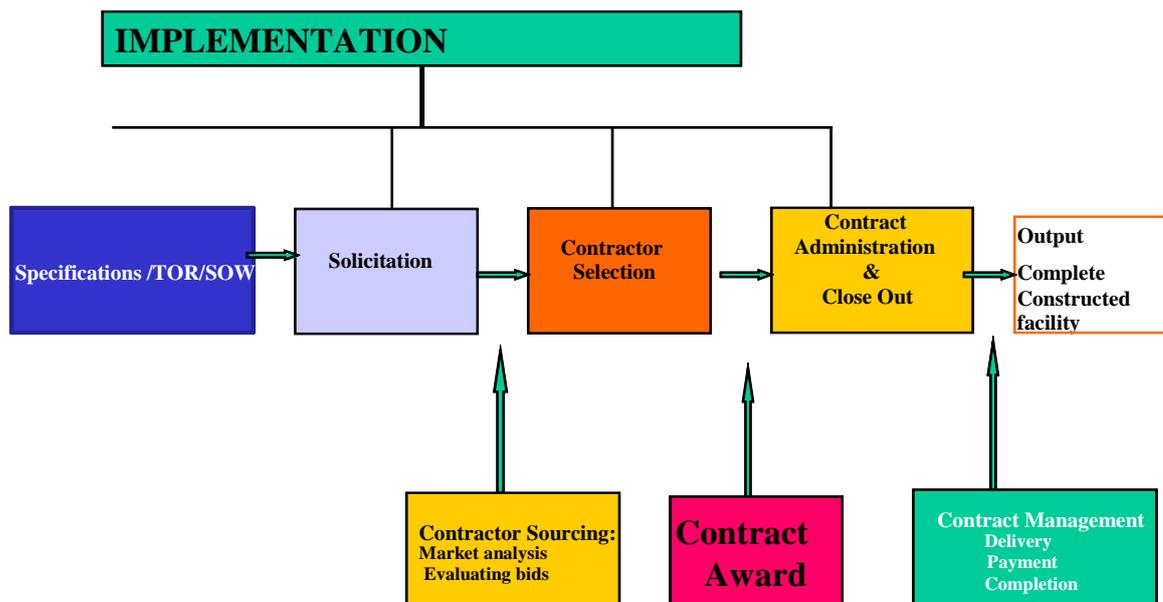
Appointment or the method of appointing a supplier involves outsourcing that is not competitive for various reasons. It is a form of single sourcing. It is generally a rare practice in public sector, which tends to emphasize competition as a principle for judicious use of public funds (Thai, 2008).

Competitive tendering

Fundamentally, government procurement systems are designed among other objectives to be competitive and achieve best value solutions that discourage favouritism (Reed and Swan, 1997; NASPO 1997; Linscott, 1999). Accordingly, *competitive tendering* is the most commonly used means of selecting suppliers for construction especially in the public sector. Competition is both on quality and on price. Winch (2002) observes that the selection process and the criteria upon which the final decision is made are highly formalised. Details may vary from jurisdiction to jurisdiction but generally assume a certain pattern that includes; invitation by advertisement with strict deadlines, receipt and evaluation of bids, award of tender and contract to successful bidder and contract administration.

Concours is a variant of competitive method but one which emphasises the quality of a solution rather than price. It is particularly useful for the conception and design phases. Figure 3.4 below depicts the competitive process in public sector.

Figure 3.4: Implementation of construction project



Source: Adapted from (PMI 2004) with some modification

The sub-processes stretch from specifications through solicitation, contractor selection, and contract award to contract administration and close out. In the public sector, each phase may have different agents and different principals involved creating a chain of value exchanges and associated transaction costs and benefits. Every sub-process presents an important decision point either for contractor or the client. Low (1993) has identified two common stances taken by the principle. The first is a simplistic but more objective approach which emphasises specifications, preambles, drawings, bills of quantities and others in that respect where checklists can be compiled. This deterministic approach is informed by the neoclassic mindset that assumes agents are opportunistic and therefore everything must be quantified and accounted for in writing (ibid). Contracts that are drawn tend to be specific and cumbersome requiring a heavy investment in drafting and strict supervision and monitoring during construction. Such contracts are mainly backed by legal bonds and the transaction costs associated them can be very high (Williamson, 1985).

The second stance recognises that not every aspect in construction can be measured objectively, quantified or set down specifically in writing (Low 1993; Toakley and Maroszeky, 2003). Low recommends a flexible and more relational contract governed more by cooperative stance, norms, and trust and other shared expectations embedded in institutional framework. The stance recognises that contracting is a “complex socio-political cum technical” enterprise (Low, 1993: p248). In a high trust environment, transaction costs can reduce considerably as was discussed in the previous chapter.

Solicitation, contractor selection and award of contracts can incur adverse selection effects depending on the procedure employed to solicit for and select a contractor (Petersen, 1995). The *procedural dimension* of institutions is much in operation depending on which type (formal or informal) is preferred by the actors. A formal, structured and objective or informal unstructured and subjective criterion will determine which contractor is finally selected. The

choice of preferred institution matters concerning which contractor is actually selected at the end of the process. Hatush and Skitmore (1997:p20) identify five common process elements for contractor selection. “These are *project packaging, invitation, pre-qualification, short listing* and *bid evaluation*. Whereas project packaging is part of specification, invitation is part of the solicitation process. Pre-qualification, short listing and bid evaluation constitute contractor selection culminating into award of contract.

Overview of elements in a contract

Contracts, as was pointed out in sections 2.3 and 2.9 of the previous chapter, are the most specific of inter-agency or inter-individual governance devices. All construction contracts share a basic framework that covers *scope, time, cost, quality* and *conditions* that reflect the practicalities of the contract work (March, 1988). The choice of the conditions or form of contract is typically made by the client based on identified risks. The contract therefore becomes an instrument of sharing risks in such a way as to enable efficient and effective management of those risks (Huang, 2009).

Procedurally, type of contract and actual conditions to be used are defined before the selection of a contractor. The contract price or method of calculating it is also settled before selection of contractor (FIDIC, 1999, The Aqua Group, 1999) and documents exchanged between the client and the prospective contractor eventually form part of the contract.

Types of contracts range from fixed price, with or without fluctuations through cost reimbursement, target cost, design-build to continuity contracts among others (ibid). Conditions of contracts vary according to contract types employed but fall in two main categories: *General* and *Particular* conditions; which together comprise the conditions of contract governing the rights and obligations of parties (FIDIC, 1999). General conditions of a contract (GCC) contain clauses that establish the generic risks, liabilities and obligations of the contracting parties and the procedures for the administration of the contract. However,

each individual contract will have particular conditions to take account of the sub-clauses in the GCC which mention the particular conditions (FIDIC, 1999; CIDB, 2008). Conditions of a contract express the required formal relationship between client and contractor and what is to happen should that relationship be disturbed by the failure of either party to fulfil their obligations (March,1988). These form part of “decision-making processes that occur within the overall procurement strategy” (ibid: p 20).

The processes that follow after a contract has been awarded (contract administration), are partly affected by the type or form of contract entered into between contractor and client (Turner, 2004). This may also depend on how detailed the specifications were drawn. During contract administration, Tan (2002) argues that contractors may exercise opportunism. However, following Berggren, *et al.*, (2001); the client can also exercise opportunism. When the project nears completion, a number of special activities take place before the contractor’s responsibility can be considered complete. A transition period may be allowed during which tests, start-up tasks, financial and physical closeout can be finalised (Bennett (2003). Project closeout is complete when transition from project organisation to operating organisation has commenced in earnest (ibid).

E. Operation, monitoring and maintenance

In section 3.3 and in figure 3.2, it was depicted that the ultimate clientele of public services are the citizens (but also as users) of the constructed facilities. However, as citizens they elect representatives who form a government (state) which in turn contracts service *providers* (government departments/corporations). While service providers may hire contractors to *deliver* services and undertake to *supervise* the performance of those contracts, representatives of the citizens may undertake monitoring of services including construction projects. Supervising organisations have both managers and frontline or street level staffs who *actually* undertake the supervision.

F. Evaluation, extensions and policy review

The evaluation phase allows planners and managers to learn lessons that would be useful for future planning and management of construction projects. At this stage, one can view actual results with the advantage of hindsight. The main purpose is to learn lessons for the design of future projects that supplement those gathered during the course of implementation. A second purpose is to help ensure accountability, whether of international aid agencies, government, or the citizens at large.

In summary, complexity affects the mix of actors and in turn, the configuration of actors relates to institutions actually influencing transactions. This is because actors carry along their respective professional or technical ‘baggage’ of institutions that influence their decision-making and actions through bounded rationality.

3.5 Summary of the chapter

The chapter has underscored the high importance of construction industry in any economy. It is often used as a barometer of the health of an economy and governments can manipulate the industry either to stimulate growth in case of a recession or slow down one which is overheating. Because of this central importance of construction industry and its operational units, the construction projects, it becomes vital to understand what institutions influence the process of outsourcing construction projects. Extant literature has tended to study efficiency issues as it relates to getting the prices right through introduction of competitive outsourcing and managing the risk of adverse selection and opportunistic behaviour of contractors. Little attention appears to have been paid to the opportunistic behaviour of the public client.

Under NPM, the public client has become complex and increased centres for accountability. Government has become pluralistic with many entities that undertake contracts in various sub-contexts of a jurisdiction. This study focused on central and LG levels of state. The literature review confirms that the construction industry is mainly managed by projects under

which formal contracts are key components. However, pre-and post contract award decisions of various actors will influence the performance of these formal contracts. How the interaction between a formal contract performance and other institutions occurs, is context specific and remains an empirical question.

The chapter has outlined the major decision points in the outsourcing process which present leverage points at which one can examine how and why institutions influence the process of public sector outsourcing of construction projects. The next chapter builds on these strands of literature into an analytic framework that was used to study the case of Uganda. It will integrate the strands of literature in these two chapters, two and three, into a framework for studying how and why institutions influence the process of public sector outsourcing of construction projects.

CHAPTER FOUR APPROACHING THE STUDY

4.1 Introduction

The chapter has two aims, namely to explain the analytical framework gleaned from the literature, and to give a detailed description of the methodological approach adopted for the study. Section 4.1 - 4.5 are dedicated to explain these aims while Section 4.6 discusses problems, limitations and assessment of the research including ethical considerations. Section 4.7 is the conclusion of the chapter.

4.2 Analytical Framework

It is emphasised in literature that institutions matter, affecting many dimensions of development outcomes in a wide range of transactions that fall in various domains such as social, economic, hierarchical, and bilateral (Brousseau and Raymond, 2006; Adler and Kwon, 2002; Soysa 2006; North, 1990, 2005; Aoki, 2008). So, in order to gain an understanding of the influence of institutions on outsourcing of construction projects, it is important to analyse what structures (though not in a deterministic manner) the behaviour of actors in that process. Outsourcing activities are generally operational matters in which both actors in public sector and the private sector are involved as either buyers or buyers' representatives, or sellers or sellers' representatives. At that micro-level, it is expected that their relationships are governed by contracts they enter into tailored to their coordinational needs. However, many factors far beyond the provisions of bilateral contracts influence the behaviours of actors in a dynamic manner. The institutional environment and structure of social capital (World Bank, 2004; Carilli, *et al.*, 2008) constitutes these factors.

For a multi-dimensional topic like the influence of institutions on outsourcing of construction projects, it is difficult to use one theoretical perspective to offer sufficient explanations and understanding. A multi-theoretical approach was therefore adopted in this study in order to investigate; (i) Why and how are actors' decisions influenced by institutions in the

outsourcing process in Uganda? (ii) Which types of institution(s) are actually preferred in enforcement of formal contracts in outsourced construction projects in Uganda and why? and (iii) How do institutions and social capital interact to influence outsourcing of construction projects and why?

The use of this multi-theoretical framework extends beyond raising the research questions to include analysis and interpretation of data collected in this study. This approach is justified by Laffin (1997) and Lynn (1993) who recommend that public policy and management deploys a multi-theoretical perspective for best understanding. Extant literature adduced evidence that outsourcing process of construction projects occurs in institutional framework. Both formal and informal institutions engaged in a dynamic interaction with social capital constitute this framework. The utility functions of actors in this framework leveraged by both material and social costs and benefits lead to manifest behavioural patterns that influence processes like public sector outsourcing of construction projects. These relationships are depicted in the analytical framework in figure 4.1 below.

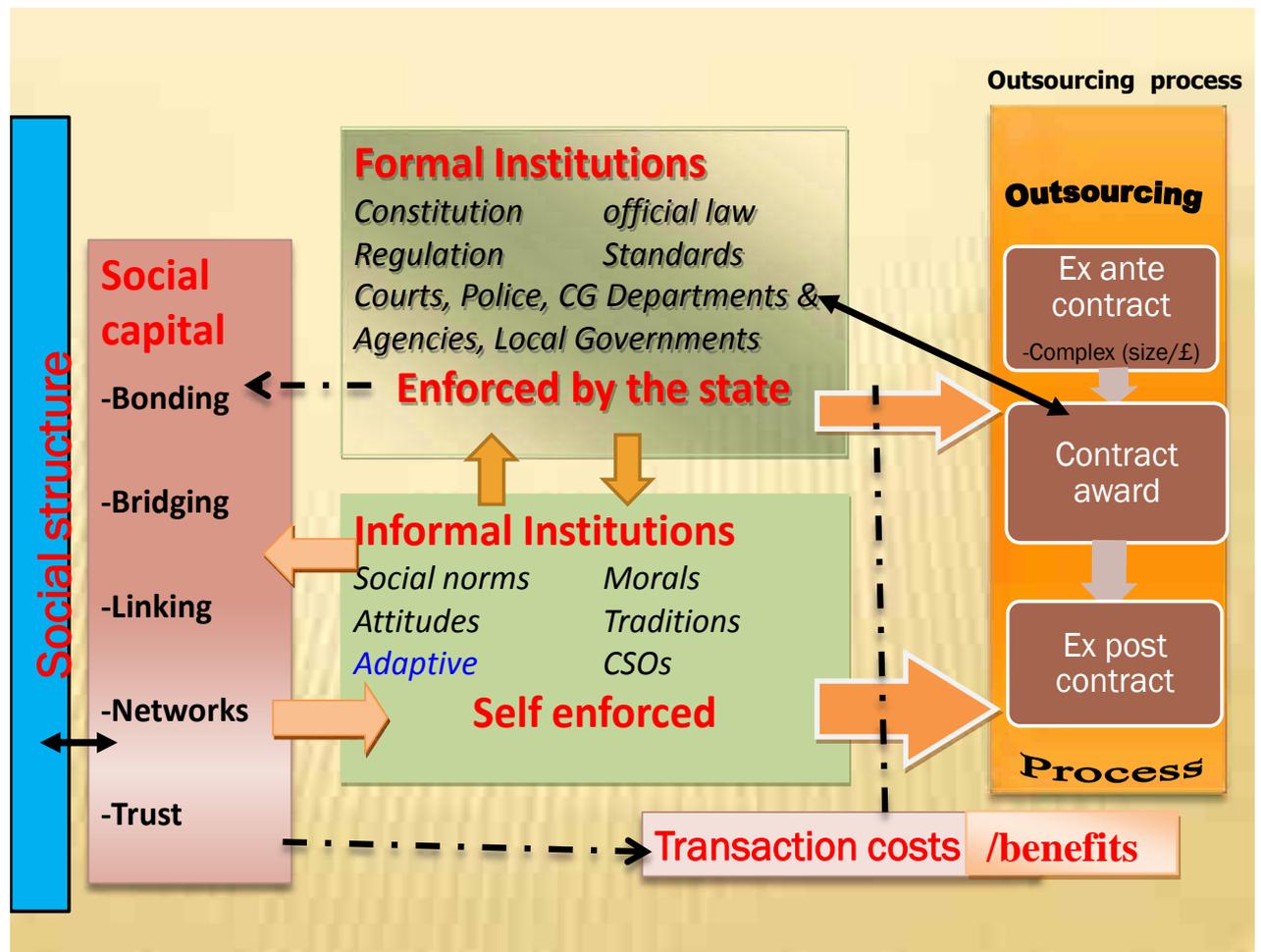
4.2.1 Explaining the Analytical Framework

The main propositions suggested by this framework are the following:

First, social structure is the source of social capital. As discussed in section 2.6 and presented in figure 2.5, this study adopts three dimensions of social structure – market, hierarchical, and social networks all of which are linked to each other and the rest of the wider community (Cardona, *et al.*, n.d.; Alder, 2001; Watson, *et al.*, 2005). These social structure dimensions arise due to social and economic exchanges and become the sources of social capital. Various actors (state and non-state, LG or CG, front-line or senior bureaucrats –back office, and politicians) derive social capital as a function of their location in the social structure.

Secondly, the framework applies social capital to institutions. The *sympathy, trust, and forgiveness* or *goodwill* social capital confers to an actor or a group of actors; influences how institutions, whether formal or informal actually function.

Figure 4.1: Analytical Framework



Source: Gleaned from literature [Williamson (2000), World Bank (2003), Cox (2004), Waschke (2007)]

The literature reviewed identifies various categories of social capital and in this study, I use *bonding, bridging, and linking* social capital types. Whereas bonding social capital provides strong social ties among relatively homogeneous groups, which support self-enforcement mechanisms of informal institutions for group members, this often, undermine enforcement of formal institutions that promote equity, fairness, equal opportunities and competition at the wider society level. Bonding social capital tends to encourage particularistic behaviour (bounded solidarity) of favouring the in-group to the exclusion of others breeding vices such

as corruption and nepotism. On the other hand, bridging social capital, usually weak ties and straddling more than one network bring together heterogeneous members of society. While bridging may weaken the strength of social ties and accompanying self-enforcement mechanisms, it facilitates access to a wider set of connections and resources. Linking social capital provide ties that 'link' members of such networks with external sources of power and resources in kind of patron-client relations along social hierarchy. Governmental actors as well as private sector actors in public sector outsourcing process are embedded in this social maze.

It is argued in this study that social capital is generally informal in nature and its relationship with informal institutions is interactive and intertwined (Grootaert and Bastelaer, 2002; Knowles, 2005). It is essentially institutionalised expectations among members of a social unit (s) that other actors will reciprocate cooperative overtures and hence the double arrows in the analytical framework linking social capital and informal institutions. The assumed regimenting effect of social capital on actors' behaviours is via the fear of denial of access to social capital by other community members fostering compliance with the cooperative standard. This phenomenon (cooperation) or 'civic virtue' (UN-ESC, 2006) can promote formal or informal institutions depending on society's preference for either a formal or informal institutional regime (Haerpfer, *et al* (2005). In this study, it is further assumed that actors' will invest more in social capital when formal institutions are weak.

The framework also assumes that formal institutional arrangements including organisational structures provide opportunity for social interactions via bureaucratic hierarchical relations that will produce some form of social network and yield some type of social capital; and hence the dashed arrow linking backwards from formal institutions to social capital.

Thirdly, the analytical framework assumes an on-going interaction or interplay between formal and informal institutions represented by the double arrows in the framework. From the

extant literature, it is noted that where formal laws and regulations and their enforcement mechanisms are effective, one finds a complementary or accommodating role played by informal institutions. On the contrary, where formal laws and regulations are weak and ambiguous, actors give more attention to informal institutions. There develops a tendency for informal institutions to substitute or to compete directly with the formal rules. Actors will tend to practice *forum shopping* –choosing at their convenient which institution to prefer and when, depending on transaction costs and benefits calculations.

Fourthly, the framework recognises that a hybrid of formal and informal institutions called *adaptive* institutions can emerge through institutional interplay between formal and informal institutions. This study agrees with Tsai (2009) that under certain circumstances, state and non-state actors, can collaborate and adopt informal coping strategies to evade restrictions of formal institutions. The assumption is that formal institutions comprise a myriad of constraints and opportunities that may motivate everyday actors particularly at the front lines, to devise novel or creative operating arrangements that are not officially sanctioned. With repetition and diffusion, these informal coping strategies take on an institutional reality and may even lead to institutional conversion whereby an institution is used to achieve alternative purpose different from its originally designed one. The framework proposes that the process that leads to establishment of adaptive institutions initially creates an institutional framework that is inconsistent and unstable leading to high transaction costs for economic agents (Meyer, 2001). Adaptive institutions are institutional dissonance resolution mechanisms (Krug and Hendrichske, 2008).

Fifthly, actors whether state or non-state, at local government or national level, employ institutions that are more advantageous or beneficial in their context than others in reducing transaction costs. Based on the transaction costs and benefits analysis, this thesis argues that depending on the social structure figure 2.6 in chapter two and extreme left in figure 4.1

actors find themselves embedded in, certain institutions (formal or informal) in the centre of the framework, are preferred as alternative to others in an act of forum shopping. Where state laws and regulations do not appear to be serving local government(s) actors' needs or fail to cater for special constraints of frontline actors and interests, such everyday actors may appropriate formal institutions to serve their own ends. At the same time, state agents may collaborate with ordinary people by intentionally misinterpreting the formal institutions that they are supposed to uphold. This may be facilitated by convergence of interests of local officials and local citizens in a particular policy area such as promotion of local entrepreneurs and professionals instead of promotion of competition at the national or international levels. It is further argued that social capital, bonding actors in certain contexts, will reinforce reciprocal arrangements whereby the social relations among local politicians, bureaucrats, and entrepreneurs need to earn each other's goodwill and this pursuit of social capital can have considerable influence on actors' transaction costs and benefits calculations. Ascribed roles by societies also play an influence on decision making and actions of an individual (referred to in the review of literature).

Sixthly, the analytical framework considers four levels of governance that provide actors with coordination solutions for their transactions as was depicted in figure 2.1. Level one is the societal embeddedness system, level two is the institutional environment that constitutes generic institutions, setting the rules of the games and providing actors with minimal, general, non-negotiable, and incomplete coordination solutions applicable to a large range of heterogeneous bilateral transactions.

Level three are collective and often adaptive institutions intermediate between institutional environment (level 2) and inter-individual (bilateral) contracts (level 4). Level four is constituted by customised bilateral contracts, which are a culmination of the public sector outsourcing process. Bilateral contracts aim to overcome the mal-adaptation costs of the more

generic institutions which provide less specific solutions that are poorly adapted to particular outsourcing contexts, such as in a particular LG or a government ministry or even a particular service.

However, there are high costs for setting up customised bilateral structures and therefore often private/adaptive institutions emerge to offer complementary or substitutive elements of level one or level three. Sometimes, voluntary private ordering through professional associations are collective devices of dealing with the inadequacies or incomplete contracts and less adaptable institutional environment. It is assumed that there is a temporal and logical continuum between contractual governance mechanisms and institutional one.

Seventhly, on the extreme right of the analytic framework, the outsourcing process of public sector construction projects is juxtaposed as the principal unit of analysis for examination of the influence of institutional interplay and their interactions with social capital considerations. An abridged outsourcing process is presented in the framework for display expedience. However, this summary process is concealing a detailed chain of events which present leverage points at which one can examine how and why institutions influence the process. Figure 3.4 in Chapter three presented a generic process of implementation of construction projects and figure 5.6 in Chapter five presents detailed roles, responsibilities and decision points in the outsourcing process that can trigger forum shopping. These leverage points in general include procurement planning and budgeting, procurement requisition, confirmation of availability of funds, review of procurement plan and cost estimates. Others are approval of procurement method, preparation and approval of bidding documents, advertisement and invitation of bids, manner of receipt and opening of bids, appointment of evaluation committees, preferred methodology and evaluation criteria, how evaluation reports are discussed for award of contracts and notification or failure to notify losers, signing of contract or instituting an administrative review. After award of contract, contract management

including mobilisation, adherence or non-compliance to contractual provisions and eventual contract closeout by default or by successful performance (completion).

In general, the thesis argues that transaction costs and benefits or net gains of using institutions would vary with reliance on a particular governance level at a given decision point. Optimal balance of transaction costs and benefits lies with actors employing simultaneously all governance levels to harness complementarities among the various institutions (levels) and between informal and formal institutions. The thesis further argues that informal institutions may be preferred to lower transaction costs, and used to earn social capital, while formal institutions are very costly to observe and often lead to erosion of social capital, especially bonding social capital.

Preference for informal institutions can minimise transaction costs and optimise benefits because actors are often restricted to certain networks where reliance is on trust and goodwill amongst such social groups based on ethnicity, clan and family relations and friendships.

4.2.2 Summary of linkages in the Analytical Framework

In short, the analytical framework encapsulates the theoretical approaches discussed in chapters two and three into an integrative and interactive model. The framework assumes that both actors and structure matter. Contracts related to outsourced construction projects are performed through both invoking formal laws and regulations on one hand, and actors' concern for transactions costs, social praises and possible risks (sanctions) on the other (Johnson, *et al.*, 1999; Macaulay, 1963, Cech and Conn, 1996).

The framework considers central and LG levels and incorporates street level bureaucratic analysis. It is argued in this study that actors in the process of public sector outsourcing (both state and non-state), are influenced by a combination of formal and informal institutions in varying degrees that depends on their perceived net utility gain that incorporates material and

social costs and benefits. The framework privileges the notion that actors remain intendedly rational albeit socially embedded (Gratonovetter, 1985; Beckert, 2003; Jackson, 2003).

There is therefore a number of interactive relationships; (i) between social structure, which is a source of social capital for individuals, as well as collective actors on one hand, and institutions on the other; (ii) between the formal and informal institutions, and (iii) between outsourcing contract(s) and the general institutional environment of a particular context. The framework views central and local government levels of public sector outsourcing as different contexts that affect actors' behaviour and actions influencing outcomes of outsourcing process. These two levels of government (inter-governmental) also interact in certain ways.

4.3 Research Methodology

This section sketches and justifies the methodology utilised in the research undertaken as the basis for this thesis. As a first step, I discuss the case study design and the choice of qualitative methods, following on from the analytical approach outlined above. The section also treats the protocols established to assure validity, reliability, and confidentiality of the thesis. The review of the research process begins with piloting phase, the choice of the study sites and participants, the interview and observation methods employed. Problems encountered in organising and conducting the research and how they were resolved are also discussed. First, the theoretical purview of the study is explained.

4.3.1 Alternative approaches considered for the Study

In design of this study, relevant literature was critically reviewed in order to identify relevant gaps that justified the research at a doctoral level. After a stimulus practical puzzlement as was outlined in the background information in chapter one, my initial thoughts were to conduct a study on public policy implementation focusing on the role of competitive outsourcing of classroom construction projects for Universal Primary Education (UPE) in Uganda. I intended to use public choice theory as the main analytical framework. However,

after review by the supervisory panel and further critical examination of the issues and the justifiability of studying outsourcing and classroom construction, the study appeared too narrow to provide sufficient materials for PhD research. Besides, public choice theory explanatory power was considered limiting as actors in public sector outsourcing such as for classroom construction projects, are considered to exercise rationality that is 'bounded' by institutions.

Thus, influence of institutions on public sector outsourcing of construction projects (not only classrooms construction), was deemed more interesting in public policy reform implementation in a developing country. This area of policy reform was selected because of practical, moral and theoretical reasons. On the practical level, it related to the researcher's initial puzzlement with development projects alluded to at the beginning of this thesis (page 1). The moral rationale is based socio-economic importance of construction and infrastructure development in general pointed out in the next chapter (five) concerning its ability to stimulate economic growth, influence employment levels and affect income distribution.

At the theoretical level, public sector outsourcing of construction projects provides opportunity to apply institutional and social capital theories to the study a large number of actors. These actors such as policy makers, politicians, planners, donors, oversight agencies, local and central governments, administrators, contractors, community members are all involved in implementation of this policy reform (outsourcing) of construction projects. When these actors are performing within social units, they factor social capital calculations in their decision making. They experience plural rationality because of the interwoven relationships between institutions and social capital. The process of public sector outsourcing of construction projects in a developing country presents opportunity for empirical investigation of these relationships. I reviewed relevant literature that led to identification of critical gaps especially concerning the Ugandan case, which this study attempts to fill. I considered case study design as appropriate for the study.

4.3.2 Study design and strategy

Study designs are concerned with the entire process of organising a research activity from conceptualising a problem to writing research questions, through the collection of data, in ways that are most likely to achieve the research aims. A research design is "...the logical sequence that connects the empirical data to a study's initial research questions and, ultimately, to its conclusions" (Yin, 2003:p20). This study adopted a case study design. According to Cresswell (2007:p73), Yin (2003:p20), and Gerring (2004), a case study as an empirical research, has the following distinguishing characteristics:

- An inquiry in which an investigator studies a bounded system (a case such as a nation-state, revolution, political party, or person) or multi-bounded systems (cases) Gerring (2004)
- Investigates a contemporary phenomenon within its real-life context (setting), when boundaries between phenomenon and context are not clearly evident, "...fuzzy around the edges" (Gerring, 2004:p346)
- Makes context a relevant issue in the research problem and to answer 'how' and 'why' questions (Yin, 2003; Gillham, 2000).
- Probes deeply through detailed, in-depth data collection involving multi sources of information (e.g. observations, interviews, audiovisual material, and documents and reports) (Yin 2003:p20) and "analyse interaction between the factors that explain present status or that influence change or growth" (Amin, 2005:p199-200).

The researcher considered this study to have the above-mentioned distinguishing characteristics to qualify it for case study design. Uganda as a nation-state is a sovereign jurisdiction bounded by its systems of rules, structures and culture. Why and how institution influence public sector outsourcing of construction projects, specifically at the central and LG levels in Uganda were the focus of the study.

The boundary between institutions influencing the process of outsourcing construction projects and the social, political, and economic contexts of Uganda is unclear. There are interwoven relationships among institutions and context and therefore, in the study, it was necessary to cover contextual conditions, as they are pertinent to institutions, a central plank in the inquiry. I found it most unsuitable to use an experimental design because this would have required me to divorce the phenomenon under study from its context and pay attention to only a few variables so that context would have been controlled. Nor could I use a survey design because it would have been extremely difficult to limit the number of variables and pre-determine respondents of a survey. I needed to deal with a full variety of evidence from interviews, documents and observations for which case study design is most suited to deal with and helps focus on *process* questions and less on *content* questions. In addition, the fact that the researcher had no control over actors' behaviour in the outsourcing processes strengthened the adoption and justification of the case study design rather than use experimental or survey methods.

However, the decision to use a case study design brought forth the question of what type of case study to adopt. Creswell (2007) distinguishes case study types along two dimensions: (1) *size*, based on whether the case involves one individual, several individuals, a group, an entire programme, or an activity, and (2) *intent* of case analysis based on an issue or concern, which could be a single instrumental case study, collective or multi-case study, and the intrinsic case study. This typology is similar to four designs by Yin (2003) displayed as matrix (Table 4.1).

Table 4.1: Basic types of designs for case studies

	Single-case designs	Multiple-case designs
Holistic	Type 1	Type 3
Embedded	Type 2	Type 4

Source: Yin (2003:p40)

The horizontal dimension of the matrix displays the number of cases to be used and the vertical dimension indicates the unit of analysis, holistic (whole bounded system) or embedded (within cases of the whole). A similar typology of ‘co-variation’ on temporal and spatial basis is advanced by Gerring (2004). This study falls within Type 2 case study design of Yin’s typology with a single instrumental case but with embedded units of analysis. The within cases consist of all sub-units that lie at a lower level of analysis relative to the inference under investigation - the principal unit of analysis. Stake (1995) argues that a single case study should focus on an issue or concern, and then select one bounded case to illustrate the issue. An embedded case study (within-case) design therefore does not only focus on the holistic (entire or global) view of the case but is also sensitive to the phenomenon operational detail that traces the process (process-tracing). Within-case case study design is well suited for analysis of casual process to answer *why* questions such as for this study. In line with George and Timothy (1985:p35) within-case analysis also helps to “...investigate and explain the decision process by which various initial conditions are translated into outcomes”. It attempts to explain *how* both actors and structures matter in terms of interactions among actors; actors and their social aggregates to

...uncover what stimuli the actors attend to; the decision process that makes use of these stimuli to arrive at decisions; the actual behaviour that then occurs; the effect of various institutional arrangements on attention, processing, and behaviour, and the effect of other variables of interest on attention, processing, and behaviour. (George and Timothy, 1985:35)

In other words, focus on *process* or process-tracing, attempts to uncover “...the microfoundations of individual behaviour that connect...causes and outcomes” (Fallet, n.d.:p1) in order to identify the intervening causal progression from “...independent variable [variables] and outcome of the dependent variable” (George and Timothy, 2005:p206). In ontological terms, there is difference between a positivist approach or statistical method, and the method of process-tracing. The statistical method attempts to define causal effects (i.e. the expected value of the change in outcomes –when in theory – only one independent variable changes), and process-tracing identifies the *causal mechanisms* as “...ultimately unobservable

physical, social, or psychological processes through which agents with causal capacities operate, but only in specific contexts or conditions...” (George and Timothy, 2005:p137).

The causal mechanisms connect causes to effects, which is the strength of embedded single case study design. It has power of elucidating causal mechanisms in greater depth (detail, richness, completeness, wholeness) than multiple case study design which often suffer thinness because they have little to say about individual cases (Gerring, 2004) since they tend to sacrifice depth at the altar of quantity (Greenaway *et al*, 1992). Indeed all research designs invariably face a choice between more depth on less width, and less depth on more width (Ragin, 2000; Creswell, 2007). The defence as well as criticism of the case study lies along these lines.

In this study, the focus is on the process of public sector outsourcing, in particular, the ‘influence of institutions on the public sector outsourcing of construction projects in Uganda’ described by UNDP (Jan 2006) as,

an overall *process* of acquiring goods, civil works and services which includes all functions from identification of needs, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration through the end of a service contract or the useful life of an asset

This outsourcing process in public sector of Uganda is the principal unit of analysis and based on ‘space’ and ‘hierarchy’, I selected the sub-units. I considered the spatially and hierarchically decentralised authority centres in terms of CG ministries, district LG, and municipal authorities. This was to avoid conducting a case study wholly focused on a nation-state without embedded units which would have been an analysis at “...an abstract level, lacking in any clear measures or data” (Yin, 2003:p45). Gerring (2004:p344) warns against studies of single cases without embedded units that “...a single unit observed at a single point without the addition of in-unit cases offers no evidence whatsoever of a causal proposition”. It was therefore appropriate for this study to incorporate (embed) subunits of analysis to add further opportunities for in-depth analysis to enhance insight into the case.

Accordingly, the study adopted the *embedded single case study* design. The choice of Uganda as the principal case for this research was for practical as well as theoretical reasons. In practical terms, I selected Uganda partly for economy and convenience as it is the researcher's home country. Familiarity with the society, the public procurement systems (outsourcing) and public administration in general; including a vantage position of almost ten (10) years as a lecturer at UMI where most public administrators are alumni, were key practical factors in selecting Uganda.

However, the choice of Uganda transcends practical reasons. Uganda is both a *typical* and *revelatory* case of African public outsourcing systems and perhaps of most developing countries. Yin (2003:p387) states that the objective of a *typical single case study* "...is to capture the circumstances and conditions of an everyday or commonplace situation". Uganda like most African countries and indeed other developing countries especially of the British Commonwealth family, share a heritage of colonialism where by a centralised public procurement system was adopted (Sohail, *et al.*, 2001; Agaba and Shipman, 2009). The colonial public procurement system has been the subject of reform to advance public sector outsourcing through adoption of decentralised practice subject to central regulation. This experience is typical of East African countries (Kenya, Tanzania, and Rwanda) and many other African countries including Ghana, Nigeria, and Malawi. Lessons learned from the Uganda case are informative about experiences of countries who have taken similar procurement reforms.

As a revelatory single case study, the investigator had a rare opportunity to access sensitive information regarding public sector outsourcing of construction projects often shrouded by malpractices and corruption. Actors in the outsourcing process many of whom are former students at the investigator's workplace (UMI) constituted the key informants and prior rapport made it easy for them to open up in trust that their 'secrets' would not be used against them. Yin (2003:p42) agrees that a single revelatory case study is justifiable if a "...situation

exists when the investigator has an opportunity to observe and analyse a phenomenon previously inaccessible to scientific investigation”.

The within-cases selected were five in number. Three district local governments, two municipal authorities and CG ministries. Since the research touched on informal norms, practices, expectations and attitudes related to procurement, this became a sensitive subtopic.

As Devine (2003:p288) puts it,

Research is sensitive because of its topic, its location or both...means the research has potential implications for society as a whole or some people within it, or it is threatening to the researcher or the subjects in terms of financial, political, social or psychological costs and dangers.

As much as is practical, the names of the districts and the ministries are not mentioned in this thesis because of sensitivity of the research in order to protect the identities of respondents. However, the sub-units were purposively selected to reflect three criteria; (1) district LG which have experienced decentralised procurement authority for over ten years which were also predominantly rural, (2) municipal authorities with cosmopolitan population, and (3) government ministries with mandate for development and/or maintenance of physical infrastructure which they share with local government authorities e.g. roads.

Accordingly, a district local government and a municipality were selected from Eastern and Western regions of Uganda. The two municipal authorities and two districts were selected based on theoretical replication. An extra district LG was added because it was considered a model LG in many respects by the Decentralisation Secretariat of Uganda, a body charged with the supervision of local authorities. Outsourcing at CG ministries was treated as a sub-unit. In general, the criteria for selecting sub-units involved an attempt to compare like with like but at two levels of analysis –the central and the LG. In both cases, I sought to explain the influence of institutions in Uganda’s public sector outsourcing of construction projects.

However, the researcher is aware that case study approach in general and a single case study design in particular, have not been without critics. Critics assert that case study designs lack

rigour or that too often are based on equivocal evidence or that biased views interfere. Whereas one cannot entirely design out these weaknesses, measures can be taken to minimise these effects. Use of multiple sources of data (triangulation) has been used in order to cross check or validate the data (Creswell, 2007; Denzin, 1998; Patton, 1987) by using in-depth qualitative interviews, observations, document reviews, and focus group discussions to corroborate empirical evidence. The researcher also undertook peer review and debriefing of participants for their views that provided an external check of the research process as recommended by some authors (Ely *et al.*, 1991; Lincoln and Guba, 1985; and Merriam, 1988) among others. Indeed, Lincoln and Guba (1985:314) observe that "...the most critical technique for establishing credibility" of the research findings and interpretations is soliciting participants' views.

Critics of case studies further observe that they offer limited basis for scientific generalisation, a criticism generally levelled against qualitative research paradigm (see section 4.3.3 below). Critics revile qualitative research for its failure to "...adhere to canons of reliability and validity" (LeCompte and Goetz, 1982:p31) in traditional sense of experimental design or quantitative paradigm. In particular, criticisms against case study design point to lack of statistical samples that would be the basis for generalisation. However, such criticisms are basically from the point of view of positivists and treats generalisation narrowly to imply "...empirical application of data to wider population" (Miller and Brewer, 2003:p127) - a form of representational generalisation. Generally, representational generalisation is considered inappropriate to qualitative research because it assumes probabilistic samples from the population of study (Bryan, 2001; Lewis and Richie, 2004). Qualitative samples are not intended to be statistically representative and the findings cannot be used for representational generalisation, a tendency of qualitative research rebuked for subjectivity and difficulty for study replicability or comparability.

On the other hand, whereas such statistical generalisation may not be feasible with qualitative case study design, analytical generalisation (generalisation to theory or case-to-case transfer) is tenable through theoretical or 'interactive' sampling (Denzin, 1970; Yin, 2003). This view is supported by other writers (Glesne and Peshkin, 1992; Lincoln and Guba, 1995) who have commented that generalisation on the terms of quantitative paradigm is unnecessary in qualitative research. Instead the objective should be 'transferability', -being able to relate findings in one setting to other settings or contexts beyond the sampled one (inferential generalisation), through "rich, thick description" that "allows readers to make decisions regarding transferability." It is assumed that detailed description enables readers to transfer information to other settings (cases) and to determine whether findings can be 'generalised' "because of shared characteristics" (Erlandson, *et al.*, 1993:p32).

Specifically, a single case study is criticised for its lack of replication or repeated observation necessary for comparison although this criticism is muted when critical or revelatory case is selected. Besides, as Miller and Brewer (2003:p23) observe "...like a single experiment, one case study provides an observation that can be generalised to a general theory, particularly when considered in concert with the results from other studies." The study design should show a thorough consideration of what an adequate degree of transferability would be. Murphy, *et al.*, (1998) have counselled that transferability is not the responsibility of the investigator. It is for the reader of the research report to look for resonance and make judgement as long as the investigator provides all the necessary details (thick description) to make it possible for a *natural* basis for generalisation (Stake, 1995).

This study considered the influence of institutions on public sector outsourcing of construction projects, a policy implementation process in which actors' decision making, behaviour, and action are assumed to be facilitated and/or constrained by the institutional environment. The study adopts an interpretive qualitative approach in order to answer the

research question; “Why and how do institutions influence public sector outsourcing of construction projects?” This approach is discussed in the next section.

4.4 Interpretive qualitative approach

In order to explain the way institutions function to influence the process of public sector outsourcing of construction projects, the interpretations of actors who participate in the process need to be treated as the primary source of information. Actors’ behaviour is a matter of their interpretations of circumstances they experience, the rules they prefer to obey, and their detailed descriptions of cognitive and symbolic actions. Actors’ perceptions bound their rationality.

Information regarding actors’ rationality can be interpreted from data collected through detailed interviews, focus group discussions, and observations of actors’ behaviours in the outsourcing process. Accordingly, this study adopted qualitative methods which were informed by an ‘interpretivist’ philosophy. This is interpretivism in the sense that concern is with “how the social world is interpreted, understood, experienced or produced...focussing upon social meanings, or interpretations, or practices, or discourses, or processes, or constructions...as meaningful elements in a complex – possibly multi-layered world” (Mason, 1996:p4). Because of this philosophical inclination towards critical realism it was deemed that possibilities of measurement are very limited ... “(Mingers, 2004: p96) since the focus is to explain the meaning of the phenomenon.

This section therefore deals with the methods used in this study and their rationale from an interpretive qualitative approach. The rest of the section goes in detail to explain and justify the stance and choice of research methods adopted for this study.

The choice of research methods is informed by “...what we know philosophically and its application affects what we can know” (Smyth and Morris, 2007:p2). In selecting qualitative research, I made the following philosophical assumptions in line with Creswell (2007) that; (i)

ontologically, there are multiple realities in accordance with various subjective experiences of participants from which information can be gleaned; and (ii) epistemologically, it was appropriate for me as the researcher to minimise distance between self and what was being researched (interaction) in the 'field'. These philosophical assumptions informed my choice of interpretive qualitative methodology.

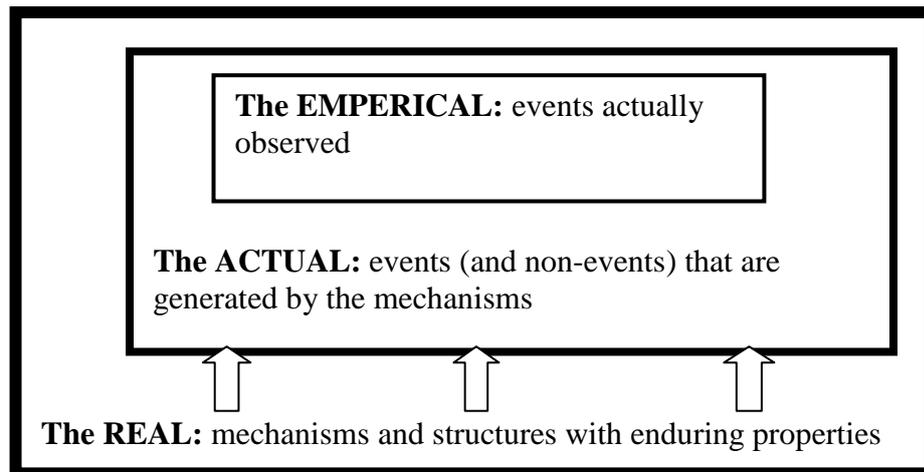
Qualitative research involves the collection and interpretation of data that are not easily reduced to numbers. Denzin and Lincoln (2000:p3) define qualitative research as:

... a situated activity that locates the observer in the world. It consists of a set of interpretive, material practices that makes the world visible. These practices.....turn the world into a series of representations including field notes, interviews, conversations, photographs, recordings and memos to the self.qualitative researchers study things in their natural settings. Attempting to make sense of, or to interpret, phenomenon in terms of meanings people bring to them.

In accord, Snape and Spencer (2004) posit that qualitative research is a naturalistic, interpretive approach concerned with meanings, which people attach to phenomena (actions, decisions, beliefs, values etc) rather than the collection of numerate statistical data. It is systematic, organised process dealing with textual material from talk and observation to derive meaning (Malterud, 2001).

Qualitative research is often associated with idealism while quantitative work is identified with realism although these stances are challenged by 'conventionalism' (Mingers 2004). Mingers argues that "... pure, unmediated observation of empirical "facts" [is an] "impossibility" (ibid: p90). *Realism*, at its basic, is the philosophical doctrine that some things exist independently of the mind. *Idealism* on the other hand holds that the world is created by the mind. Following conventionalism, this study agrees with Bhaskar that what is perceived and therefore can become empirical experiences is a small subset of the domain of *actual* events. Also actual events are a small fraction of *real* events that exist and are independent of our perceptions or belong to "Bhaskar's *intransitive* domain" (Mingers, 2004: p92). The relationships among these domains (empirical, actual, and real) of events as explained are illustrated in figure 4.2.

Figure 4.2: Relationships among domain of events



Source: Mingers (2004: p94)

Based on the model it is argued; knowledge that is empirically produced is transitive, and localised both in space and time, unlike laws or tendencies that are generally universal (ibid). So, what are the appropriate methods for data collection in this tradition of *critical realism*?

Critical realism accepts description but is never content with it and requires "...to get beneath the surface to understand and explain *why* things are as they are, to hypothesise the structures and mechanisms that shape observable events (ibid: p100). Accordingly, we considered qualitative approach as the best option to answer the main study question of "Why and how do institutions influence public sector outsourcing of construction projects?" This is so because institutions are a property of the collective, they function as such when preferred by individual agents or actors in their decision-making.

As humanly devised constraints and incentives (constructs), institutions shape human interaction and consequently structure transactions or exchanges, whether political, social, or economic. The transaction costs and benefits that actors bear are mainly perceptual leading to bounded rationality best understood through an interpretive approach. Institutions and social capital are structural features of the society or polity just as institutions have a structural dimension (van Hees, 1997). Institutions are created or evolve with the only reason: decrease

uncertainty and lower transaction costs. They are stable over time. They must pose constraints and affect individual behaviour of its members. When actors collectively perceive a rule or an organisation as a constraint to actions or providing opportunities, such a rule or organisation is an *effective* institution. This study is about effective institutions, rules and organisations *actually* influencing outsourcing of construction projects in the public sector. The data was analysed through an interpretive qualitative approach and its methods.

The qualitative research methods used in this study have the following key elements: One, data which are very detailed, information rich and extensive; and was systematically collected. Data collection involved close contact between the researcher and the research participants in an interactive, iterative, and developmental style allowing for emergent issues to be explored

Secondly, I focused on meaning through mapping and representing the social world of research participants in accordance with Spencer, *et al* (2003) and Snape and Spencer (2004).

Thirdly, it aimed at an in-depth and interpreted understanding of people's experiences, perspectives and histories by learning about their social and material circumstances. In addition, the research was to promote greater understanding of not just the way things are, but also why they are the way they are through documentary review, intensive in-depth interviews, observation, and group discussions. The data gathering process was as laid below.

4.5 Data gathering process and methods

Data gathering process

A three-episode process was assumed for the study; the first was documentary desk review in both Uganda and the U.K, the second and third coincided with two separate field visits in Uganda. The desk study was conducted to review the existing academic literature on public choice theory, public sector outsourcing (procurement), institutional and social capital theories, public policy and project (construction/physical infrastructure) implementation both

in developed and in developing countries. Further to academic literature review, statutes, Acts of Parliament (LGA, 1997, 2007; PDA 2003 and others); regulations, other public policy documents, and official reports, archives were studied. The major print media of Uganda (*The New Vision*, *The Daily Monitor*, *Independent* and *The Weekly Observer*) around and about procurement were also examined.

Published academic books and articles provided the main materials for the desk study episode of the research. I accessed these through libraries in Birmingham, U.K. and Kampala, Uganda. Internet, other library catalogues and electronic databases were particularly useful. Since there was better access to electronic databases while at the University of Birmingham (UoB), the researcher concentrated on collecting as many relevant articles as could be identified and saved them on flash disks and e-mail accounts for further study while in Uganda. The researcher as an externally as a split-location student of UoB, was based in Uganda and only made periodic visits to Birmingham.

The desk review of academic and other documents provided theoretical and practical basis for the study and conclusions drawn helped shape the thesis and research questions. The process of reviewing literature (including official documents) in practice proved to be a continuous one instead of an episode as relevant new literature kept coming up all the time of the PhD programme 2005 -2009. The field activities themselves helped in identification and collection of more documents, which the researcher became aware of from interviews with key informants.

Literature review, which began at the commencement of the PhD programme in November 2005, temporarily lasted up to May 2007 although it remained on-going after field work. The research questions developed as a result of literature review were elaborated into detailed questions that formed the interview protocol. This activity resulted in the sketching of the

conceptualisation of the study including development of the analytical framework and research methodology.

In the field visit episodes, specific data collection activities included:

- Semi-structured interviews with key informants at central and LG levels
- Focus group discussions at CG levels
- Observation of artefacts (products) of construction projects and contract committees (CC) of local and CGs agencies
- Documentary analysis of Laws, Acts, Statutes, plans as well as well as reports and other relevant written outputs.

The first fieldwork episode was undertaken from July 2007 to March 2008 in Uganda. The period was used mainly for the conduct of key informant interviews and observations in the field. This part of the fieldwork had a principal purpose of gathering data on institutions influencing outsourcing of construction projects. Prior to moving to the field the first set of guiding questions derived from elaborating the research question were piloted on selected respondents involved in public sector outsourcing. These respondents were easily accessed because they were postgraduate students at UMI where the researcher is a lecturer. I browsed student records with the Institute Registrar where part of the information students provide is their current occupation and place of work. Six (6) respondents were identified and interviewed as presented in table 4.2 below:

A second set of guiding questions were developed arising from the piloting of the interview guide. The following observations were made from piloting the interview guide, (1) it [guide] was too general to allow in-depth discussion, (2) making notes while interviewing was difficult and disruptive for the smooth capture everything important and it tended to interfere with the flow of discussion, (3) when I proposed to introduce tape recording, respondents did not object except for one who during the interview at one point asked me to pause tape-

recording. He allowed me to resume after saying what was considered very sensitive matter, (4) the interview tended to end abruptly without an opportunity for the respondents to give their views on the related issues which they considered important, and (5) the duration of the interviews ranged from thirty (30) minutes to one and half (1.30) hours. Respondents were also asked to comment on how they judged the interview in terms of sensitivity. All of them commented that some aspects of informal institutions were very sensitive to comment on because they touched on ethical issues.

Table 4.2. Respondents in pilot study

Position	Number	Responsibility in outsourcing
Assistant Town Clerk	One (1)	Secretary to Municipal CC
Chief Administrative Officer (CAO)	Two (2)	Accounting officer of a District LG
Engineer	One (1)	Has supervised projects at both Central and District LGs
Planner	One (1)	Provides decision support systems for road construction in RAF ¹¹
Contractor	One (1)	Civil works contractor

Arising from the observations of the piloting stage, it became necessary to adjust the interview schedule. It was apparent that some questions needed further elaboration to allow a smooth conversation. In addition, there was need to move progressively from less sensitive questions to more sensitive ones, and ending with a general open question to allow the respondents to comment on what they felt was not being tackled in the study. The original broad questions remained generally the same but were broken down further to facilitate more probing.

As a prelude to the interviews, the researcher would explain to the target respondent that the study was for academic purposes and information would be restricted to that. Respondents were assured that no names of individual respondents and their participating LG were going to be used in writing the study thesis. Making research participants anonymous is recommended by (Yin, 1994) and was used in “Whyte’s (1943/1955) famous case study *Street Corner Society*” (Yin, 2003:158), for sensitive research. Then respondents would be

¹¹ RAF is Road Agency Formation

requested for the interview with an option to tape record the proceedings but with liberty to ask the researcher to pause recording if deemed necessary by the respondent. Most respondents accepted tape recording.

The second fieldwork episode took place from July to September 2008. The principal purpose was to validate findings and interpretations, and identify any gaps in the data then collected so that more could be gathered. I began with presentation of a paper to an international conference convened by the “International Association of Schools and Institutes of Administration (IASIA)” in Kampala Uganda from 14th – 18th July 2008. The paper entitled “The influence of institutions in public sector construction projects in Uganda” was based on data, preliminary analysis, interpretations, and conclusions drawn from the earlier fieldwork. I invited research participants to be part of the international audience of researchers, public administrators, academia and media. This served as both peer review as well as ‘member checking’. The feedback was used to do further document review and interview more key informants. Additional key informant interviews and focus group discussions that were conducted at the national level to further complement the data gathered at local authority levels. Major additions to the sample were senior officials of large construction companies who tender for construction projects at CG level. Analysis and writing resumed from October 2008. In order to enhance the reliability of the data, triangulation was critical. Efforts focussed on linking, comparing and validating documentary sources with insights emerging from key informant interviews, focus groups discussions and observations at national and local authority levels. The next section discusses details of data gathering techniques.

Data gathering techniques

The nature of the research question made it more amenable to qualitative data gathering techniques. In dealing with the influence of institutions on public sector outsourcing of construction projects, one needs to delve into and interact with actors in the outsourcing process to know the terms under which choices are made progressively from one stage to the

other in the causal chain of outsourcing process. It was important to know the views of actors on the process and attitudes to specific issues. The data gathering techniques were tailored at teasing out "...actors' preferences, their perceptions, their evaluation of alternatives, the information they possess, the expectations they form, the strategies they adopt, and the constraints that limit their actions" (Bates, *et al.*; 1998:p12) as well as inter-institutional interaction.

The option of quantitative research was further ruled out because of the difficulty to build a well-defined sample to facilitate the use of quantitative techniques. The complexity of the causal chain in outsourcing process where particular context (LG and CG levels) are intertwined with the phenomenon of public sector outsourcing made it necessary to use case study design as already explained in section 4.3.2.

Case study data gathering involves a wide array of procedures for the researcher to build an in-depth picture of the case. Creswell (2007) offers a compendium of case study data gathering techniques into four categories: *observations, interviews, documents, audiovisual materials*. This study used mainly interviews and documents although observations and audiovisual materials were also used to a limited extent. The way each technique was used is explained below.

Interviews

According to Creswell (2007), interviews range from close-ended or fully structured to open-ended, fully unstructured interviews. In this continuum one can use field notes *per se* or use of audiotapes and transcription or varying degrees of a combination of field notes, audio taping and transcription. Interviews may be by e-mail, face-to-face, one on one or focus group discussion, online focus group or telephone interviews depending on practical and strategic reasons for netting the most useful information to answer research questions. The choice of interviews for this study is rooted in the epistemological understanding that privilege actors'

accounts as data sources, which assume centrality of talk and text in ways of knowing about the social world (Mason, 2002: p225) through an interpretive approach.

Fully structured interviews are similar to formal survey and require a representative sample and each respondent is asked the same set of questions, in the same sequence using the same words. Typically, the researcher assumes a neutral role without prompting or interpreting meanings (May, 1997). Structured interviews (SI) are more suitable when researchers are interested in width (large representational sample of cases) other than depth (purposive select case or cases) in order to make representational generalisations about a population (Lewis and Richie, 2004; Yin, 2003). Interviews, which are one of the most important sources of case study information, are "...guided conversations rather than structured queries" (Yin, 2003).

Fully unstructured interviews do not use any preset questions or interview protocol. May (1997) describes unstructured interviews (UI) as informal conversation between the researcher and interviewee(s) without any specific protocol which enables interviewees to challenge the preconceptions of the researcher. UI allows interviewees to draw upon ideas and meanings that attached to events and the role of the researcher is reduced to generation and development of questions according to what participants say. Yin (2003) warns that in unstructured interview it can be a great challenge satisfying the needs of "...the story line of inquiry while simultaneously putting forth "friendly" and "none threatening" questions (ibid: p90).

Along the continuum of fully structured and fully unstructured interviews are semi-structured interviews (SSI) and their use allows flexibility to take advantages from both extremes and to avoid most of the disadvantages associated either of them. This study employed SSI protocol with open-ended questions as already pointed out in the first part of this section. To achieve the study objectives, the interview protocol consisting broad research questions was used although not strictly followed. Each research question was broken down to a number of

prompt sub-questions. The researcher was able to probe the respondents guided by the open-ended questions in the interview protocol. This made it possible to follow up a point for detailed discussion in order to pursue interesting themes in the line of inquiry. As mentioned earlier, with SSI, the researcher prepares in advance the interview protocol that consist of a set of questions (set of topics) and this protocol helps structure the interview and allows the researcher to generate probing questions in interesting areas of inquiry during the interview (Flick, 1998). This helps to keep the interview flow focused on the topic and unencumbered by a strictly 'ordered quizzes'.

Generally, the interviews began with questions to invite the interviewee to open up and talk. As a prelude to the interview, the researcher did self-introduction, the explanation of the purpose of the research (as part of academic requirement for PhD award) and a promise that information would be restricted to that. In addition, a pledge was given that no names were going to be used in writing the study thesis. Then respondents would be requested if it were okay to audio record the interview and a promise that the recording would be paused at any time at the behest of the respondent in case one did not want a comment audio recorded. All interviews ended with three questions. (1) Whether the respondent had any other comment(s) regarding public sector outsourcing which had not been touched in the interview?, (2) Who else would be very informative on the subject so that an interview could be arranged?, and (3) Are there any important documents related to the subject matter known to respondent that would be useful for the study?

The initial interviewees were with those the researcher knew and later others particularly representatives of contractors were selected on recommendations of those already interviewed. Whereas it was easier to identify members of statutory offices such as Accounting Officers, members of Contracts Committees, relevant Engineers, it needed a snowball technique to identify informant private sector contractor representatives such as

Project Engineers, company proprietors, Consultants and others. Table 4.3 below displays categories of informants interviewed and their detailed descriptions are in appendix four.

Table 4.3 Categories and number of informants

Position	Number	Responsibility in outsourcing
Former Minister of Local Government	One (1)	Was Minister for fifteen years during which public policy reforms leading to decentralisation in Uganda was carried out
Top and senior officials CG Department	Five (5)	Head user departments at the CG and others are Accounting Officers
PPDA officials	Two (2)	Regulate public sector outsourcing/procurement
Government Engineers	District (4) Municipal (2) CG (3)	Supervise public construction projects
Chief Administrative Officer (CAO)	Three (3)	Accounting Officer of a District Local Government
Town Clerks	Two (2)	Accounting Officer of a Municipal Local Government
Engineers of contracting firms	Three (3)	Have supervised projects at both Central and District Local Governments
Members of Contracts Committees*	CG (3) Districts LG (4) Municipality LG (2)	Chairmen and other members take decisions to award contracts *-two from District and one from Municipal LG were also Heads of their respective entity's PDUs
Proprietors of construction firms, who are not engineers**	Four (4)	Actively seek construction businesses with public sector agencies **-two of them doubled as LG Councillors
Local Government Politicians***	Two (2)	LG Councillors. ***-these Councillors doubled as contractors with their respective LGs
Heads of Procurement Units (PDU)	Four (4)	Technical staff in charge of procurement
Architects from Consulting firms	One (1)	Design and supervise projects
Leaders of civil society organisations	One (1)	Associated with a District LG for 16 years from its inception, runs largest NGO and a community radio in the area
Total	41	Actual number of respondents was forty one. There are five respondents who belonged to more than one category as indicated by asterisk (*) symbol

Source: Compiled from field notes

Most interviews took place in the offices of respondents either on their desks or in their organisational boardrooms. These were generally quiet places, except for one respondent. A lot of noise was drifting in from the main street of Kampala Uganda where this respondent was occupying an office on the first floor. I had anticipated that audio recording would be poor so I proactively took notes as well. Interference from the respondents' clients was minimal except for one District Treasurer and a former Minister. The District Treasurer was under pressure to sign cheques of his superiors and in that case the interview had to be paused now and then to allow him to attend to his clients. The

former Minister, who held the portfolio of LG for about 15 years and had presided over almost all major changes in the LG system, was rather busy receiving grassroots representatives of his party in preparation for the planned 2011 Presidential elections. His insights were very rich and had to use a combination of audio recording and field notes during the interview, which was interfered with rather often by his clients.

A total number of respondents interviewed were forty-one and they included a Former Minister of LGs, a Director, an Under-Secretary, and Commissioners in CG Ministries, Directors in Public Procurement and Disposal of Assets (PPDA) Authority staff, CG, LG and contracting firms' Engineers, CG and LG members of Contracts Committees, District Chief Administrative Officers (CAOs) and Municipal Town Clerks, , Proprietors of construction firms who are not engineers, Heads of CG and LG Procurement Units (PDU), LG Councillors, Architect from Consulting firms, and a Leader of Non-Government organisations. The sensitivity of the research precluded attaching a detailed schedule of respondents.

Focus group discussions

Focus group discussion (FGD) is a form of interview where a group of interviewees are carefully selected in order to obtain their perceptions on a defined area of interest (Krueger and Casey, 2005:p5). FGD can be a methodological triangulation to enrich information already collected using other data gathering techniques.

FGDs were not originally planned for this study. It became necessary after presenting the preliminary findings of the study to the IASIA international conference, as already pointed out in this section. The feedback received from discussants of the paper made it necessary to gather more data and validate data already collected through FGD. One contention was whether lack of capacity was responsible for some instances of informal dealings or was it deliberate rent seeking behaviour or reciprocity due to social capital.

Another issue was the quality of leadership provided by the accounting officers as a moderating factor in smooth implementation of the procurement reforms and indeed other reforms.

A discussion guide was developed for use in FGDs to help in guiding the discussions in the required direction. The guide captured a number of themes based on issues that were not fully explored in the one on one interviews. During the IASIA conference, relevant conference participants were identified and recruited for the FGDs based on their level of participation in the outsourcing process of construction projects. Proprietors and project engineers from international construction companies represented at the conference were requested to participate in an FGD. Through the discussion, it was learnt that their business in the country were treated as part of national investment promotion by the state with all benefits bestowed on any international investor in Uganda which gives them an initial edge to indigenous firms because of tax holidays they enjoy.

The FGD proved very useful because it allowed participants to interact on issues critical to their business. The group dynamics promoted debate that was useful to corroborate information generated through interviews and documentary analysis and raise important issues interviews could not bring forth.

Documentary Analysis

Documentary analysis involves use of several types of documents as sources of data and they include organisational official documents, legal documents (acts, statutes, and regulations), "...formal studies or evaluations of the "site" under study, newspaper clippings and other articles in mass media... (Yin, 2003:p86). Others include personal records such e-mails, memoranda, journals, and diaries (Gray, 2004:p264).

Documentary analysis formed an important source of data for this study. First, it formed the basis for understanding the conceptual frameworks relating to the study. Secondly, it assisted the researcher to understand issues under investigation, and thirdly, documentary analysis complemented data collected from other sources such as personal interviews and focus group discussions.

As a complementary source of data, I collected most documents during the field exercise. As mentioned already, before putting a closure to the interview sessions, I requested for copies of relevant documents. I collected useful documents from the interviewees and some gave useful leads for further materials to be collected. Some further work to secure documents other than relying on interviewees included visits to the following resource centres: the Cabinet library of Uganda, the National Documentation Centre, MoFPED resource centre, the PPDA Authority resource centre, the IGG library, the World Bank resource (Kampala), Makerere University Bookshop, and UMI library. The range of documents used for this research included books, journal articles, periodicals, reports, policy documents, Bills and Acts of Parliament, government press releases and conference materials. A summary list of documents collected and analysed is presented in table 4.4 below.

Table 4.4 Documents collected and reviewed

No.	Document title	Description
1.	Public Procurement and Assets Disposal (PPDA) Act 2003	Provides overall framework for public procurement and assets disposal
2.	PPDA Regulations 2003, 2007	Operationalises the Act at Central Government level
3.	PPDA Regulations 2006	Operationalises the Act at local government level
4.	Local Government Act (LGA) 1997	Established the local governments
5.	Procurement and Financial Regulations 1998, and 2007 of Uganda	Were for operationalisation of LGA
6.	PS standing orders of Uganda	Public Service (PS) for administration and conduct
7.	Building bye laws of Uganda	
8.	Constitution of Uganda, 1995	
9.	FIDIC	International rules governing construction
10.	Uganda District integrity surveys 1998	
11.	Partnership guidelines –water sector	Donors and GoU agreements for the water sector
12.	Some contract documents	
13.	News papers	Media coverage of construction projects

Public sector procurement reform studies, which were intense preceding the enactment of the PPDA Act and other closely related policy reform documents such as decentralisation policy, were examined to gain further insight of contextual issues (national and local) and identify further information gaps as a basis for refining the questions to key informants and in-depth discussions. Documents were also used for validation and triangulation of other data sources. I went to the field with an open mind to make observations.

Observations

Observations made in this study were mainly informal lacking formalities such as an observational protocol. They were incidental as fieldwork offered an opportunity for direct observations. Yin (2003:p92) opines, “By making a field visit to the case study “site” you are creating the opportunity for direct observations...some relevant behaviours or environmental conditions will be available for observations”. Direct observations were particularly useful in confirming and corroborating interview data on the size and quality of physical outputs of the construction projects such as buildings, and roads. Shoddy works and stalled construction projects were directly observable. In addition, the researcher who has been a member of the contracts committee of UMI, a public agency, used this membership to make observations as a participant.

Yin (2003) describes participant observation as “...a special mode of observation in which you are not merely a passive observer.” I actually participated in the contract committee for a four-year term, which coincided with my period of enrolment for this PhD study. Immediately after every Contract Committee, I would record my observations in a journal I had developed. This incidental role as participant-observer provided me with opportunities to gain access to events and detailed insights (of an insider) that would otherwise be inaccessible to scientific investigation. However, I had to guard against biases that participant-observer role may bring along. For example, I had to exercise caution against assuming positions or advocacy roles

contrary to the interests of good scientific practice to remain as if I were a disinterested external observer. Overall, the in-depth data collected was a lot and probably slightly more than what would have been just adequate as the exercise of data analysis proved.

4.6 Data analysis

Data analysis phase of a qualitative research project such as this one is not fully distinct from other steps (data collection, and report writing) of the research process (Creswell, 2003). Nor does off-the shelf techniques exist for data analysis. Rather, as Yin (2003:p110) observes “...much depends on the investigator’s own style of rigorous thinking, along with sufficient presentation of evidence and careful consideration of alternative interpretations. Nevertheless, a number of authors (Huberman and Miles, 1994; Madson, 2005; Creswell, 2007; Connolly, 2003) have advanced a general contour of the process of qualitative data analysis, which includes (1) Data management phase, (2) Generative phase, (3) Interpretive phase, and (4) Representing and theorising phase which I generally followed.

A. Recording and managing data

Systematic utilisation, scrutiny, and analysis of Interview, FGD, Observations, and Field notes data began in the field although audio tape recording of interview and FGD data was after fieldwork. Most respondents accepted the interviews to be tape-recorded in full. However, three (3) respondents refused tape recording altogether, and six (6) requested pausing the tape recording during the interview. This was usually when a respondent was going to share anecdote on an on-going project where some information related to what the respondent considered impropriety. In those instances, I took notes, which later proved a challenge to collaborate with the transcripts from audio tapes. Audio recording amounted to thirty-four tapes each lasting ninety minutes and transcription yielded nine hundred and sixty of double spaced font twelve pages. A highly qualified and experienced transcriber did the transcription from the Parliament of Uganda. She used sophisticated equipment at Parliament

that is normally used to prepare the Parliamentary *Hansard*. However, in making this choice to transcribe the data, I considered the need for anonymity and confidentiality since the topic was a sensitive one. I give further explanation concerning confidentiality in the section of ethics later in this chapter.

In transcribing interviews, verbatim transcription was done and this included “ums”, “ahs”, and noting pauses during the interview (conversation) to ensure comprehensiveness. Gilgun (2007) recommends verbatim transcriptions where the budget can allow because of the important cues such details can provide concerning informants’ state of mind and that of the researcher. These details were necessary since I did not personally transcribe. Indeed, for some sections of the transcriptions, I went back to the audio tapes to get a feel of the tones and any hesitations by the informants, but also to cross check the accuracy of transcription. I personally word processed field notes to add to audio transcriptions while saving original scripts and tapes for any future reference. During analysis there was frequent references forth and back to this raw data set.

B. Generative phase

“The generative phase involves...careful examination of the data sentence-by-sentence, paragraph-by-paragraph, sometimes, word-by-word analysis of the text” (Connolly, 2003). This is important for the researcher to be familiar with the data. As Agar (1980) recommends, familiarity with the data is a vital step prior to breaking the data into parts.

For this thesis, I read the transcripts in their entirety several times trying to get sense of the text data as a whole including correcting spelling errors. Through writing memos in the margins of the transcripts and typed field notes, I found it useful in the initial exploration of the database. However, Yin (2003) warns that it can be a sterile exercise if data collection lacked an overall analytical strategy.

The analytical framework developed in section 4.2 and illustrated in figure 4.1 guided the analysis. Through reading and re-reading of the transcripts, field notes and continuous reference to the analytical framework, analysis was kept close to the research questions and hypothesis of the research. This was to avoid drifting from the main context of the research and develop grounded conceptual categories. In essence, the equivalent open coding of grounded theory method according (Connolly, 2003) was used. Strauss and Corbin (1990) describe this approach as breaking down data "...into parts, closely examined, compared for similarities and differences, and questions are asked about the phenomenon as reflected in the data" and "through this process, one's own and others' assumptions about phenomena are questioned or explored to new discoveries" (ibid: p62) in order to develop first coding of the data into themes.

In developing conceptual categories however, I used a very laborious and time-consuming step of producing a tertiary document (index) where I recorded the initial themes and the corresponding page numbers of where the parent text was located in order to refer to the texts in case direct quotation became necessary. This procedure produced 47 pages of a catalogue of themes with reference pages from the main transcripts (an index). I had to reduce these themes into a manageable number of *conceptual categories* through an interpretive process (Connolly, 2003:p109) explained in the next sub-section.

C. Interpretive phase

According to Creswell (2007), the interpretive phase represents the heart of qualitative data analysis during which "...researchers describe in detail, develop...dimensions through some classification system, and provide an interpretation in light of their own views or perspectives in the literature" (ibid: p151). It involves the process of reconfiguration from the particular, detailed coding, to the general by grouping themes and becoming increasingly distanced from the particular toward the more general and abstract (Connolly, 2003).

This procedure provided freedom to consider the categories in different ways or “lessons learned” as described by Licolne and Guba (1985) cited in Creswell (2007:p154) and exploring alternative meanings (lessons) and new understandings. The interpretive phase yielded four conceptual categories that were used to write the final narrative (Creswell, 2007). The major categories used in this study are government procurement of construction services (representing public sector outsourcing), contextual issues influencing outsourcing process (representing influence of institutions and social capital), enforcement of bilateral agreements (representing contract enforcement), and institutional interactions and social capital. However, the conceptual categories needed to be confirmed by returning to the data and generative coding, and re-examining the categories to increase grounded validity of the findings (Connolly, 2003) at the same time referring back to the hypotheses and research questions of the study (Dey, 1993). In other words, it helped to maintain the findings grounded in the data.

It is noteworthy that during this interpretive phase, I attempted to analyse the data sector by sector according to Central and LGs that constituted the case study embedded units. I also considered discussion of details within each of the outsourcing phases. Eventually, I preferred to create *meta-themes* organised along traditional phases of procurement (see next section, D). I adopted this approach because :(i) since the principal unit of analysis was the phenomenon of public sector outsourcing process of construction projects at country level, I needed to keep focused on making conclusions at that level, (ii) due to the sensitivity of the research subject, details of sectors or LGs would have exposed the respondents, an ethical issue I tried to avoid and (iii) detailed reporting on stages within phases of outsourcing process made presentation and readability of the case study report cumbersome. I therefore opted for cross-case analysis using the embedded units as mere “...evidentiary base of the study” (Yin 2009:p173).

D. Representing and theorising phase.

Representing data is a form of data display to make easy for drawing conclusions. Miles and

Huberman (1994:p429) define data display as "...an organised, compressed assembly of information that permits conclusion drawing". In representing data, researchers package what was found in text, into tabular or figure form and "...cells of a table contain text, not numbers" (Creswell, 2007:p154).

In thesis, I found 2 X 2 matrices to be useful in linking conceptual categories and had been useful in facilitating discussions during the IASIA conference and FGD with the research participants. The display figures simplified discussions and offered an opportunity to test the robustness of the propositions and theoretical explanations were accordingly constructed. The process of data analysis as a whole made it possible to develop consistent explanations based on the research questions and hypothesis. Larger meaning of data comes from understanding, interpretation, and representation (Creswell, 2007). Overall three chapters (five, six, and seven) of analysis were developed.

4.7 Problems, limitations and lessons

I encountered a number of limitations during the study. This was in spite of efforts put in the design and conduct of the research since most of the problems I had anticipated them before the commencement of the field study. Indeed many problems were solved in the course of conducting the research as qualitative studies have a degree of flexibility in their administration.

Nonetheless, for those inclined to positivist approach, will always find limitations to point out especially those associated with determining 'objective truth'. There is also the 'Rahomon Problem' (Polsby 1984) where everyone has a more or less coherent, but slightly different version of the same sequence of events. This subjectivism of qualitative research construes the social world as an outcome of interpretative activities of individual actors to construct social reality. Johnson, *et al* (1973:p21) argue that

As social reality is nothing more than a negotiated outcome between individuals' interpretations of 'what is going on', the investigator can hope for little more than a 'place' within this meaningful dialogue, which, as a continuous process, constitutes and reconstitutes the social world from moment to moment.

Accordingly, Johnson, *et al* (1973) reiterate that the social investigator is engaged in interpreting 'what is going on' and therefore social science is not a special or privileged account of social activities but merely seek to replicate what actors' interpretations of social reality are. As already pointed out, this ontology of critical realism is based on a social reality that is stratified into domains (empirical, actual, and real) and they are elements that are transitive and intransitive. This ontological position is based on anti-foundationist belief that 'reality' is socially and discursively 'construed' by human actors and that, there are no central values that can be rationally and universally grounded. In essence social reality is time and space dependent. Rather than assuming that there is one reality, which the investigator must seek to capture, anti-foundationist, in particular critical realists hold that there are multi realities (Mays and Pope, 2006; Muterud, 2001) and that they (realities) are "...fluid [in motion] and co-constructed, and knowledge is taken to be negotiated between the observer and participants (Cohen and Crabtree, 2008:p334). The researcher therefore considered these limitations and others of study sites, participants, permission, and ethical issues.

Many respondents whom I approached were very cooperative because of the respect they expressed both for the Institute I work for and for the University of Birmingham (UoB), known by most government workers in Uganda. However, a few were apprehensive doubting whether I was actually a student or a spy. One respondent having handed him introductory letters (one from UMI and the other from the UoB, in appendix) asked me to return the following day. He admitted to the researcher later that he needed time to search the UoB website site to confirm whether I was actually a registered student there and not an impostor. It appears in Uganda spies present themselves that way. Suspicions of spy work were accentuated in the months of October and November 2008 due to wide spread negative media coverage of shoddy government construction works in preparation to host the Queen of

England and Commonwealth Heads of Governments Meeting (CHOGM) in Uganda ahead of arguably the largest event held in the country since independence. Fortunately, by this time, I had completed fieldwork except for the IASIA conference presentation and FGD held during this time.

Empirical studies often encounter some informants who may not report truthfully. In this study, biases could have been introduced especially by some respondents who remained sceptical that I was not a *bona fide* student or doubted whether I would really keep my promise of confidentiality. These could have introduced biases. One respondent called me for a repeat interview after getting more details about me from my work place disclosing that he had not believed me at first since they were under investigation for shoddy work they had performed earlier in the year. But since most respondents were very familiar with my workplace or knew me personally from their contact with UMI; such cases were very isolated and in any case I could detect apprehension when it occurred by short measured answers.

The other problem encountered was to explain my topic of study, which includes the concept of “institutions”. This concept is an academic construct and therefore making it understandable in ordinary language was a challenge. I used the analogy of the football game, which many people appreciate, to illustrate rules of the game and its actors, and context in which it occurs. Respondents easily understood after the illustration something I was able to appreciate from the way conversations preceded. My further insights on the research are given below.

4.8 Assessment of the research

A criterion for assessing qualitative research has to assume a position from which to pass judgement. In this section, I explain how validity and reliability were achieved.

Many commentators have argued that a traditional scientific stance of quantitative research is inappropriate to assess qualitative research as the two belong to different distinctive paradigms (Chapple and Rogers, 1998; Smith, 1985; Smith and Heshusius, 1986). This stance of naïve-realists implies that (i) "...reality is mind-dependent" and (ii) "...the denial of any possibility of context-free reality which might be used as a criterion against which research findings might be judged" (Murphy, *et al.*, 1998:p167). This realist stance denigrates qualitative research as mere anecdote of personal impressions or conjecture (Pope and Mays, 2000).

On the other hand, extreme relativists hold that all research perspectives are unique and each is equally valid on its own terms. In the study, this is not the position adopted. Instead, in agreement with critical realists who believe that all research involves subjective perception and those various methods only produce different perspectives of the same reality. However, unlike anti-realists, I believe there is an underlying reality, which can be studied, represented and therefore criteria applied to judge qualitative research. In the same belief, May and Pope (2006) posit that it is legitimate to apply the broad criteria of validity and reliability to both qualitative and quantitative research and only modify to take account of the distinctive goals of qualitative research.

This research should be assessed on qualitative criteria of *credibility*, *dependability*, *confirmability*, *transferability* and *reflexivity* as developed by Hamberg, *et al.*, (1994) and elaborated in Malterud (2001). The criteria correspond to validity and reliability in a broad sense as explained below.

Credibility

Credibility is a criterion advanced to assess rigour in qualitative research as an alternative to internal validity in quantitative research (Malterud, 2001). In general terms, validity is the conventional term used to describe the 'correctness' or 'precision' of research reading. It

addresses the question of *how well* the social reality being measured through research, matches with the constructs researchers use to understand it. The goal is to demonstrate that the inquiry was carried out in a way, which ensures that the subject of research was accurately identified and described. The researcher needs to make plain personal and intellectual bias at the outset of the research reports to enhance credibility of findings, something akin to a resume of a speaker before a public presentation.

Transferability

The criterion of transferability as applied to qualitative research is closely related to external validity or the concept of generalisability in quantitative research. It asks, “Whether the findings from a study based on a sample or the case(s) can be said to be relevant beyond the sample (case) and the context of the research itself” (Lewis and Richie, 2004: p263). Two broad levels can be considered for generalisation: - *empirical* and *theoretical* generalisations.

Empirical generalisation concerns the application of findings to the population from which the sample is drawn (representational generalisation); and generalising to other settings or contexts beyond the sampled one (inferential generalisation). *Theoretical* generalisation on its part involves induction of theories from findings of a study for more general application. In its classic form, theoretical generalisation draws statements of casual relations, which are of universal application (Kaplan, 1964 cited in Lewis and Richie, 2004). Theoretical propositions or statements from findings are usually based on inferences from theoretical samples. The concept of transferability exonerates qualitative research from accusations of being mere anecdotes.

In this thesis, findings on the socio-political and economic conditions of public sector outsourcing in Uganda has been extensively presented to allow for transferability of the findings to other similar settings or context. Some authors LeCompte and Goetz (1982) argued that qualitative researchers too often ignore external validity and tend to focus on a

single setting preferring to suspend preconceived notions of existing knowledge of the field under study. Milnerud (2001) however doubts transferability of research findings irrespective of methodology used. He counsels that it is better for researchers to undertake thorough documentation to distinguish scientific research from superficial conjecture and leave the reader with the responsibility for transferability. In this study, I have endeavoured to furnish as much detail as space could allow including information on dependability.

Dependability

Robson (1999:p405) observes that “Dependability is analogous to reliability” Reliability according to Lewis and Richie, (2004) is concerned with the replicability of research and whether or not results would be repeated if another study, using the same or similar methods, was undertaken. In this research, I took the following steps to establish dependability:

- I triangulated using multiple data sources (interviews, focus group discussions, document reviews, and observations) in order to produce a holistic understanding;
- Undertook iterative process, whereby concurrent data analysis informed the next interview in case an issue of interest came up, it would be pursued in the next interview (Kuper, *et al.*, 2008)
- Peer review in which I presented preliminary findings to an international conference with the purpose of getting feedback on the robustness of the study
- Member checking was undertaken as part of the Focus Group Discussion following the international conference presentation

My prayer is that when my Supervisory Panel and later the External Examiner passes this thesis, further proof of dependability will be achieved.

Confirmability

Confirmability of research refers to the degree to which the researcher can demonstrate neutrality of the research interpretations through a ‘confirmability audit’. This means

providing an audit trail consisting of 1) raw data; 2) analysis notes; 3) reconstruction and synthesis products; 4) process notes; 5) personal notes (journal); and preliminary developmental information (Lincoln and Guba, 1985: p320-321). Confirmability is contrasted with objectivity in conventional wisdom, which says that research, which relies on quantitative measures to define a situation, is relatively value-free and therefore objective.

This study did not aim for neutrality or objectivity. As a qualitative research, which relies on interpretations and is admittedly value-bound, is considered to be subjective. Many researchers question objectivity of quantitative studies using statistical measures, and indeed the possibility of ever attaining pure objectivity. Malterud (2001:p605) observes that “the belief of a neutral observer even in a laboratory science” is spurious. The perspective of the observer is always limited and determines what can be seen and therefore the question ceases to be neither whether the researcher affects the process nor whether such an effect can be prevented. There must be a commitment to reflexivity.

Reflexivity

Reflexivity refers to the recognition of the influence a researcher brings to the research process. This is particularly important in qualitative research paradigm (Kuper, *et al.*, 2008) because of researcher bias such as “...preconceptions, motivations, and ways of seeing shape the qualitative research process” (Cohen and Crabtree, 2008:p333). Reflexivity challenges the researchers to disclose ways by which their ontological and epistemological presumptions guide decision-making and the choices they make through the entire research process (Keso, *et al.*, 2009). A researcher makes philosophical decisions when “... defining the purpose of research, choosing and collecting empirical conclusions and evaluating the research” (Keso *et al.*, 2009: p67).

The researcher’s perspective has had an effect on this report. I have over 20 years experience in the Uganda’s public sector. I have worked in a number public agencies (1) as manager in a

government owned commercial bank, (2) as administrator of a large District LG Development Programme, as National Coordinator of a multi-sectoral programme, and (3) an academia at a government management development institute (MDI) for the last ten years. My postgraduate training in Netherlands and Australia has been in project management, which I have been teaching in the last ten years. I have participated in public sector outsourcing as a member of Contracts Committee and many of my interviewees were my students at the UMI. These experiences have informed the research design and analysis of the case study data. In order to bring my experience to bear on this study, I was inclined to interpretism and in the course of this research; I kept a reflective journal as was pointed out earlier. As Keso, *et al*, (2009) would argue, with a constructionist or an inclined to interpretism, theory and empirical material are brought into dialogue between each other. "...a researcher uses empirical data to question...theoretical assumptions, ...and theoretical understandings to interpret ...data...one could say that a constructionist researcher **builds the road while walking it**" (ibid:p63-64) [emphasis added]. I did. However, in retrospect, there are certain realisations about the research that I have developed second thought as pointed out below.

What I would do differently if I repeated this research?

Much care was taken to design a comprehensive study; and because of the flexibility of a qualitative study, a number of corrective measures were undertaken mid-course. These have been pointed out. However, the benefit of hindsight has enlightening lessons. First, if I repeated the study, I would not undertake the laborious step of producing a tertiary document (index) in analysis of data as explained in section 4.5 (B). Instead, I would have employed qualitative analysis software such as *in vivo* to index my data and undertake further analysis. Secondly, having completed the analysis of the study I realised the importance of leadership in facilitating adoption of formal rules in order to institutionalise them. Although generally the framework considers actors' rationality and transaction cost benefits analysis, which by implication covers the role of leaders, the power of moral suasion, to reward, and to punish

should have been treated differently. In other words, the framework should have specifically included leadership and focused on political leaders of jurisdictions and their accounting officers.

Ethical considerations

Ethically sound research involves carrying out studies in a way that is "...respectful, humane and honest, and embodied the values of empathy, collaboration, and service (Cohen and Crabtree, 2008:p333). This is important recognition because research is a political act that involves power, resources, policy and ethics (Glesne and Peshkin, 1992). This research is sensitive as it touched on informal norms, practices, expectations and attitudes related to procurement where 90% of corruption cases in the case study country, Uganda, relate to procurement particularly outsourcing of construction projects. Sensitive research poses substantial "...threat to those who are involved in it" (Lee, 1993:p4). These threats are to both the researcher and others who give information or information is given about them. Ethics demand that none of these touched by the research in one-way or the other, are disadvantaged in any way.

So in order to ensure anonymity in the recorded interviews, audio tapes were labelled with secret codes instead of labelling with location and names of respondents. I kept the key to the codes and the transcriber only used Questioner (QN) and respondent (ANS). There was a residual risk of within the transcripts where specific places and work roles were mentioned. I did not consider this serious risk because there were many respondents per particular site or location. We agreed with the transcriber to delete the saved materials as soon as I received the audio tapes. In addition to the above measures, interviews always began with full explanation of its purpose. The explanation was necessary prelude for respondents to understand what the study was about. The purpose was to cultivate trust from the outset, because many people consider matters of informal institutions as illegal or unethical behaviour.

4.9 Conclusion

This chapter has discussed the analytical framework and the methodological approach adopted for the study. The analytical framework gleaned from the literature review delineates it for analysing and interpreting the case study evidence using a multi-theoretical approach based on institutional and social capital theories. Institutional and social capital theories provide insights on what structures decision making in various social, political and economic conditions for public sector operations like outsourcing of construction projects in Uganda. The analytical framework retains rationality in which perceived costs and benefits models social capital into utility function of actors to enable this study to answer the main research question; “Why and how do institutions influence the process of outsourcing public construction projects in Uganda?” and the subsidiary ones; (a) Why and how are actors’ decisions influenced by institutions in the outsourcing process in Uganda?; (b) Which types of institution(s) are actually preferred in enforcement of formal contracts in outsourced construction projects in Uganda and why?; and (c) How do institutions (formal/informal) and social capital interact to influence outsourcing of construction projects and why?

The chapter has also reviewed and discussed the research methods employed in this study. The case study design is utilised because of its capability of dealing with phenomenon that is not amenable to control and isolation from its context. Invariably, in-depth, semi-structured interviews, focus group discussion, document analysis and observations are justified for data collection to answer the research questions and test the hypothesis.

CHAPTER FIVE

INSTITUTIONAL ENVIRONMENT IN UGANDA: EVIDENCE FROM THE FIELD

5.1 Introduction

The preceding chapter presented a multi-theoretical analytical framework with a supporting research methodology that privileged case study design, an interpretive qualitative approach and process tracing. This interpretive approach aimed at elucidating the causal mechanisms responsible for the influence of institutions on public sector outsourcing of construction projects in Uganda. It is to the case of Uganda this chapter now turns.

Based on the research hypothesis in chapter one and the analytical framework of chapter four, this chapter discusses the institutional framework of Uganda and processes that lead to project identification. Through exploring the historical evolution of the state of Uganda, the structure of government and environment, the laws and regulations related to public procurement within which framework outsourcing occurs, this chapter marks the beginning of the discussion of the research findings. This is not a mere presentation of background information but analysis of the *study context* as it is integral to case study research which treats phenomenon and context as intertwined (Yin, 2004). The chapter brings together *secondary* and *empirical* data to provide an analytical understanding of the process of public sector outsourcing leading to identification of public construction projects in Uganda.

The chapter is organised in three main sections. The first analyses the main features of the governmental framework and its environment, outlining the national planning process that yields public sector outsourcing projects. The second explains the evolution of the construction project management in Uganda's public sector and the formal legal regime to support it and evaluates the influence of the political economy and social-cultural terrain of Uganda on the institutional environment. Summary and conclusion forms the last section.

5.2 Governmental framework and its environment

Churchill, a visiting British Prime Minister to Uganda in 1904, described the country as the “Pearl of Africa” in his book, *My African Journey*, published in 1908. This was on account of the immense potential he noticed in comparison to many other parts of Africa and the rest of the world he had just visited.

[Uganda] ...is alive by itself. ...it ought in the course of time to become the most prosperous of all our East and Central African possessions, and perhaps the financial driving wheel of this part of the world. ...My counsel plainly is – “Concentrate upon Uganda!”...Nowhere else will results be more brilliant, more substantial or more rapidly realised.” (Churchill, 1908:p140)

Indeed, at independence in 1962 from the British colonial rule, Uganda held a great promise for prosperity. However, the forty-six years of independence have been alternate bouts of tumult and decline on one hand, and relative prosperity on the other. These alternate events have shaped the character of the country and the institutions that have evolved. This subsection gives a treatise of the state and its environment.

5.2.1 Shaping of institutions in Uganda –historical view

Uganda, a landlocked country, is situated between 4 degrees north and 1 degree south of the Equator in East Africa on an area of 241,000 square kilometres (93,000 square miles), the approximate size of United Kingdom. The Democratic Republic of Congo bound the country to Eastern borderline, to West Kenya, to the North Sudan, to the South Rwanda, Burundi and the United Republic of Tanzania. Uganda is in the heart of the Great Lakes region surrounded by Lake Edward, Lake Albert and Lake Victoria with River Nile running diagonally across the country linking lakes Victoria and Albert. The estimated population of Uganda is 32 million (UNDP, 2008).

Uganda, which became a British Protectorate in 1894; had its nucleus as the 19th century Kingdom of Buganda, occupied by Baganda, the largest ethnic group in the present day Uganda. Other traditional kingdoms were conquered or persuaded by 1896 and the rest of the present day Uganda was under one central administration by 1914. This conquest of the British clustered 64 ethnic groupings (1995 Constitution of Uganda) with different political

systems and culture, declared the world's most ethnically diverse state (Alesina, *et al.*, 2003).

These diversities appear to have prevented the establishment of a harmonious working political community from the time of independence in 1962. British administration had followed the principles of indirect rule, which included special measures of autonomy for the Buganda Kingdom; something that was later to test (continues to this day) the cohesiveness of the nation.

At independence, the country seemed held together by a fragile coalition of kingdoms, chiefdoms, and other ethnic groupings under the 1962 constitution. In an attempt to unify the country more, the first independence Prime Minister Milton Obote, abrogated the 1962 constitution and replaced it with the 1967 centralised constitution that stripped monarchical institutions of their powers sparking off ethnic violence that culminated in a coup by the military led by Idi Amin in 1971. Green (2008:p3) sums up Uganda's post independence history as "...notoriously tumultuous, most prominently due to the misrule of Idi Amin in the 1970s and a brutal civil war in the early 1980s".

Nonetheless, the country has experienced relative stability and sustained economic growth since 1986 after the halt of the civil war of the 1980s in central Uganda by the National Resistance Movement (NRM) government led by Yoweri Museveni. However, the end of the NRM war in Central Uganda in 1986 appear to have been replaced by the Lord's Resistance Army (LRA) war waged in the northern part of the country since the late 1980s. This war has lasted for over 20 years.

Noteworthy, since taking power in 1986, the NRM government has enacted the most far-reaching economic, judicial, administrative, and political reforms since independence resulting in a sustained growth averaging six percent per annum. On the economic prong, liberalisation and market-oriented system hailed as the most successful economic reforms

taken by a post-conflict reconstruction country (World Bank, 1998; 2000) endeared Uganda as a darling of donors attracting vast amount of financial and technical assistance that has averaged about 50% of the national budget (Uganda, 2007). One of the key planks has been emphasis on outsourcing instead of in-house provisions in order to increase competition in service provision and get the prices right (Batley and Larbi, 2006) in the dictum of ‘private sector led economy’. Procurement of which outsourcing is a significant portion accounts for 35% of central government revenue and 34% of local government revenue which amount to about 70% of total public expenditure, well above a global overage range of 12-22% (Agaba and Shipman, 2009; Development Assistance Committee, 2005; Uganda, 2006).

Outsourcing of construction projects in particular is a significant element of the procurement portfolio in Uganda given that construction industry has experienced unprecedented growth in the last fifteen years or so. Since 1990, growth of construction industry has averaged between 5-7 percent and particularly went up to an average of 8.8 percent per annum from 1995/96, well above overall annual GDP growth rate of Uganda (Senyonjo and Ronaldley, 2007). Projects include construction of new office complexes, schools, roads, bridges, health centres, water projects, valley reservoirs, hydroelectric power dams, shopping malls, fuel filling stations, industrial zones with factories and warehousing facilities. Others are upgrading or remodelling of existing facilities. However, public construction projects have been mainly in the roads, education and sports, health, water, sanitation and energy sectors. Government office buildings projects have also been undertaken. There is also now extensive construction works in the oil sector that needs its unique consideration because of the complexities involved. This study focused on new developments rather than upgrading or remodelling projects. It focussed on sectors that had dual operations at the CG and LG levels to enable test the hypothesis that institutions influence construction projects differently at the two levels of government. Outsourcing of construction projects is the phenomenon of interest for this study.

On the governance front, there has been a wide range of reforms at all levels of government and society to emphasize managerialism by creation of semi-autonomous agencies, authorities and others including decentralisation (Francis and James, 2003; Mwenda, 2007; Green, 2008; Batley and Larbi, 2006). The decentralisation policy, hailed to be the most ambitious and far-reaching local government reform programme in the developing world (Francis and James, 2003) led to introduction of Local Council (LC) system, which incorporates five levels of LG ranging from village (LCI) to the district (LCV). Figure in Appendix 5 illustrates the hierarchy. The district system has been the focus of sub-national governance.

However, since 1991, government has created unprecedented number of districts from 34 in 1991 to 80 in 2008 and counting. Green (2008:p2) exclaims,

The country recently surpassed Thailand to hold the spot of fourth on the list of the world's largest number of highest-level sub-national administrative units per state,...(and far fewer people per unit) than any other large African state.

A district status creates a sub-national bureaucracy that did not exist but the numbers of politicians change less. The new political positions include district chairperson, Resident District Commissioner (RDC), District Service Commission, and a women's representative in Parliament. Other political positions like Councillors and Members of Parliament remain the same. The number of Councillors can increase if in the process a new town council is formed to house the district headquarters. All District headquarters automatically assume town council status.

Concerning positions in the civil service, a newly established district creates a new complete set district headquarter positions and in the case of a new town council, an additional position of Town clerk is also created. New districts create jobs and new centres for awarding contracts.

This proliferation of LG units shown in figure 5.2 below is for some scholars (Crook, 2003; Green, 2008; Mwenda, 2007) partly the explanation for the behaviour of actors at that level in outsourcing process. They treat the district as their given channel to partake of the national

resources and sometimes a form of reward for political support rendered or promised to the ruling party. For example, Mwenda (2007:p31) observes;

Districts and municipalities in Uganda receive over 95 percent of their budgets from Kampala [central government], which in turn receives close to half its budget from foreign aid. Such aid thus became the grist that the mills ...neopatrimonialism learned to grind. Decentralized budgeting caused every community to agitate for its own autonomous district (the basic unit of local government) in order to be surer of getting its share. In the political sphere, this meant that every ethnic group in a country with a history of communal strife and fragmentation had fresh incentive to seek its own district. In the rush for local autonomy, elites even began to allege ethnic and clan tensions where none had previously existed... With each new district came a raft of government jobs, each one a patronage opportunity (ibid: p31).

The possible implications of districts created along these lines on public sector outsourcing is a point developed further in the next chapter, six, which deals with source selection and contracting.

Given below (table 5.1) are LGs and administrative units in Uganda.

Table 5.1: Local Governments and Administrative units in Uganda

Local Authority	Number	Remarks
Districts	80	-40 districts in the offing -Districts have legal capacity to contract
City	1	-So far only one, the capital Kampala -Functions like a district
City Divisions	5	-Represented directly to Parliament
Municipalities	13	-3 in the offing -Have contracting power -Represented directly to parliament -Overall political head is district chairman -approve physical plans including for buildings
Town Councils	96	-Have planning powers -approve physical plans including for buildings -Don't contract directly
Sub-county	1,100	-Powers equivalent to town council -Cannot approve physical plans -Supposed to retain 65% of local revenue
Parishes	6,000	-Lowest level where government has bureaucrat -Supposed to receive 5% of the 65% local revenue retention by sub county
Village (rural)/Zone (urban)	50,000	-Run by democratically elected volunteers of seven -Supposed to receive 25% of the 65% local revenue retention by sub county

Source: Ministry of Local Government, Uganda

In practice, only the district and municipal levels of LG have contractual legal capacity to engage in outsourcing and this reform sub-process (decentralisation to LG) has created 91 procurement entities with legal capacity to enter contractual arrangements.

At the CG level, the reforms led to unbundling of the state functions and creation of 95 purpose driven semi-autonomous agencies (Uganda, 2003). This government action was

based on the observation of the of the Public Service Review and Reorganisation Commission (1990:p2) which stated

We found, as a basic problem, that government has, over the years, over-extended itself, competing with its own citizens, by straying into areas of economic, industrial and commercial activity otherwise not the traditional domain of Government

The re-organisation yielded over 200 autonomous government departments and agencies. Such government bodies are procurement entities (see table 5.2) with contractual capacity to outsource construction projects in Uganda (*Independent*, Wednesday 28, 2009)

Table 5.2: Procurement entities with contractual capacity

Category	Description
1. Government Ministries	Accounting Officer: Permanent Secretary
2. Armed forces (The Army, Police, and Prisons)	Accounting Officer: The Commanders in charge (Army Commander, Inspector General of Police, Commissioner of Prisons)
3. Statutory Bodies*, Authorities, Commissions etc	Established by statutory instruments or Acts of Parliament, may be funded from consolidated fund and are self-accounting
4. Government Higher Institutions of learning (Universities, Degree Awarding, Tertiary Institutions)	Public Universities, Colleges, Institutes funded from consolidated fund
5. Local Governments	Districts, Cities, and Municipalities
6. Post-Primary Institutions**	Secondary schools and technical and teachers' colleges

* Could not confirm as some are defunct

** Recently brought under PPDA regulatory framework

The state is organised as discussed below.

5.2.2 Government structure and actors' institutional preference

The 1995 Constitution established Uganda as a presidential republic with the following parts: *executive, legislative, and judiciary*. The President is the head of state and government. The constitution mandates Parliament to make laws on any matter for the peace, order, development and good governance of the country including monitoring expenditure of all public funds. There is a judicial system based on English Common Law and African Customary Law. Courts of judicature, tribunals and other subordinate courts exercise the judicial powers as established by parliament. Currently, the courts of judicature according to the constitution are the Supreme Court, the Court of Appeal, and the High Court.

Sources of legal documents spelling out formal rules or a set of rules with force of the law in Uganda emanate in four major ways:

- (1) Legislations by the national assembly, the Parliament of Uganda,
- (2) Resolutions by local councils within their areas of legislation,
- (3) Regulations and or guidelines by a legally competent body or persons, and
- (4) Court rulings of the courts of judicature (the Supreme Court, Court of Appeal, and High Court of Uganda)

However, all such rules ought to be within the provisions of the Constitution of the Republic of Uganda.

Court rulings assume a hierarchical nature. The decisions of the subordinate courts (e.g. magisterial courts) are appealable in higher courts. Special courts or tribunals include Industrial court; Tax Appeals tribunal, Land tribunal, Human Rights tribunal, and Military Court Martial. Village Councils (LCI) have judicial powers to mediate disputes involving land ownership and credit claims. The LC system is the most popular judicial service and indeed of all local government services in the country (Saito, 2008). However, LC decisions are appealable but because of ignorance of the right of appeal, time, cost involved and social considerations, appeals are rare especially in rural areas. Traditionally, many people regard conciliation and mediation within one's community as superior and of greater value in resolving conflicts than resorting to courts of judicature, which some people regard as barbarian. For example, one of the Chief Administrative Officers of a district LG during an interview stated at length;

We usually – at times it is good to solve those problems amicably – otherwise, if all the time you are going formal, then you will end up with no work. Court has never brought people together. ... a contractor takes you to court like I have seen those who have taken us to court ... there, that is the end with you. Even I see at central government level, these contractors who go to court and take government to court, they will never get any contract again. Because it is presumed that we have given you a job and you are going to work with us. You find there are problems that at times come and we do not honour our agreement. If you do not honour our agreement, for me when you raise a complaint, or when I have complaint against you, I do not even write to you, I call you. Why should you have a problem and for you just go to court. That means you are not interested in working with me. So, let us solve the problem there in court, court will order us to pay you and that

will be the end. ... We cannot fail to eliminate you, because you are not a person who is very good to work with. After all, it is like you are an employer, if your employee, takes you to court, even if he has been doing a good job, will you have that employee back in your organisation? You will not, because you know – we do not have – what do I call it? The way we operate in government, we operate a cash budget. At times money is not there, so when we fail to pay you because we do not have – it is not that we did not just want to pay you, but because we did not have the money. Then for you decided to take us to court, they start attaching our vehicles. No way, actually we blacklist you. ... Yes, we blacklist – one who takes you to court must be blacklisted. We even inform others around, - Informally now, this company – the directors are these ones, if you give them a job and you - they will take you to court. Finished! ... we have the [telephone] numbers, you call, and we know some of these people – the types of contracts they are engaged in, they are there we tell you, yes. Take care. You will never get. So, at times me – what I have done, is I talk to contractors, before we give them work. I talk to them. And these are some of the things that I tell them. That we are going to enter an agreement, it is because it – we have been obliged to have an agreement. But we would even do without an agreement with you, because I know you. I have given you my work – do I need an agreement, but because human beings cannot be trusted, that is why we enter... But me I trust you. Now, in our day to day, we do not have ideal situations. We do not have perfect situations. You may find we are not moving on. We do not have money. Now, if I take time to pay you, but when it is not my wish that I should not pay you, it is because of a certain circumstance that I do not pay you, and you take me to court, you will never get a job here again. And I will inform all the other local governments. So, I talk to them, so that by the time we are now working, they know from the word go, that it is not good. I tell them the effects of taking the person whom you are working for, to court.

Generally, actors in public sector outsourcing of construction projects tend to prefer informal way of solving problems. This has had implications in the management of public sector outsourcing of construction projects as discussed further in chapter seven.

The political heads of CG departments are the cabinet ministers. Sometimes a cluster of departments is brought under one line minister who is usually deputised by state ministers in charge of those particular departments. The local authorities fall under the ministry of LG. The head of this ministry is a cabinet minister assisted by one of the ministers of state. The CG coordinates the activities of the LGs and reserves the mandate and activities related to foreign affairs.

5.2.3 Central - local government and donor relations

The intergovernmental relations especially between central and LGs in terms of autonomy are important in order to understand how institutions influence public sector outsourcing. Both the autonomy of the CG departments and that of LGs are of interest to explain the procedures actors adopt in their decision-making and actions. It is noteworthy that the donor group is very influential in Uganda because of their contribution to the national budget of about fifty

percent. These interrelationships represent institutional interplay defined in chapter two. It is argued that institutional interplay influences actors' decision-making and actions in public sector outsourcing of construction projects as explained in the later chapters. While the inter-governmental relations are defined legally in the constitution and various acts, what *actually* happens in practice is part of the empirical question of this study as explained below.

Local – central government relations

Decentralisation in Uganda has been concerned with transfer of legal, administrative and political authority to lower levels of government. Through these reforms, semi-autonomous LGs were granted powers to make decisions and manage public functions from CG. The policy and the supporting law, the Local Government Act (LGA, 1997), which replaced the Local Government Statute (LGS, 1993), aimed at devolving power to the district and lower levels and the democratisation of decision-making. It also aimed at making government more responsive to the needs of its citizens (Crook, 2003) because of the proximity of these local authorities to where people live and work.

In terms of autonomy, the reform aimed at addressing political, administrative, and financial powerlessness at the district level. These reforms received force of the law by articles 188 and 200 of the Ugandan Constitution 1995, which empower the District Service Commission (DSC) to hire and fire employees of the district, including the CAO who is the accounting officer of the district. The finances of the LGs are a mixture of CG subventions and local revenue collections. In theory, the structure of LGs in Uganda had been considered the most generous decentralisation efforts recorded in sub-Saharan Africa and indeed one of the most remarkable among developing countries (Francis and James, 2003).

However, in practice, the picture appears to be different. Evidence point to partial implementation of reforms and in some case actual reversal, and the degree of autonomy envisaged has not been fully realised as explained below. For example, whereas, the original

LGA 1997 had granted full power on recruitment, promotion, and firing of LG staff; the LGA as amended 2006, re-centralized the appointment, evaluation, promotion and firing of the CAO, Town Clerk of municipal councils and their deputies. However, all other staffs remain under the DSC although supervision is by the CAO and Town clerk something that appears to create dual allegiance, first to a representative of the CG and to local political leadership especially whenever the two are at cross-purposes. Another element of reform that seems to have reduced the autonomy of LG is the payment of salaries to the elected District Chairperson and the District Executive Committee (DEC). These pieces of reform and others of a similar nature have implications on the extent of autonomy of decision making of actors involved in public sector outsourcing in the LGs. A secretary of a Contracts Committee (CC) in CG ministry for one of the sectors described the level of autonomy granted to districts in practical terms

...we just guide them. Of course we have still not handed over fully the construction of these ...schemes to local centres, so that's why may be you can say the centre is still in control...we have our own project coordinators...Then we have the technical support units (TSU). Now, the TSU units are manned by consultants who are employed by the centre, and we have zoned the country into 8 regions. Now, in each of the technical support units, we have a consultant, who is specialised in engineering, we have somebody specialised in community mobilisation, we have somebody specialised in hygiene and sanitation. So they go and support the districts personnel during implementation of sector activities. So for instance they go to the field when construction is going on to ensure that – to check whether the ...[projects] are being ...[done] up to the required standards...now, the coordinator supervises the consultants, and then – he is the overall in charge of everything, and then as now the TSU, remain mainly to supervise the local government activities, but not the central government procurement.

In the case of this sector, the level of autonomy in the LGs is curtailed by this superstructure imposed on them. There are levels in the planning process at which the CG can apply control over LGs.

5.2.4 National planning process and identification of projects

As was observed in chapter two, strategic planning of an entity sets parameters within which projects are identified and planned (Sifri, 2003; Winch, 2002; Morris and Jamieson, 2005; Naaranoja, *et al.*, 2007). So construction projects are implemented within the framework of national planning. It is important to understand the Uganda national planning process in order

to locate a place for project planning. Figure 5.1 sketches the linkage between national planning and project planning.

Figure 5.1: Hierarchy of national planning process



Source: Gleaned from official documents review

The hierarchy of planning shows five levels of the planning process as is explained in the sections that follow.

Evolution of national planning

The planning process in Uganda has evolved from an extreme of top-down approach to a hybrid of top-down and bottom up planning of various shades. In the first fifteen years of independence (1962-1977), government pursued 5-year plans, which formed the framework for annual budgets. Economic planning and development was a separate government function from financing. The Ministry of Planning and Economic Development (MoPED) focused on developing national plans and ministry of finance mobilised the required resources, which allowed planning to go on unconstrained by what resources were actually available. The planning process was mainly top-down with limited participation of sub-national administrations and civil society in the development of plans. However, GoU was unable to continue the five year plans after 1977 as that period was characterised by political instability.

Due to the war that broke out in 1978 and frequent changes of governments, it was not until 1987 that a steady regime of national planning resumed. Since then GoU has undertaken a number of policy reforms and implemented development programmes and projects. The government reforms generally, and the national planning in particular, has resulted in new institutional arrangements for planning and budgeting. The Resistance Councils (RCs) renamed Local Councils (LCs) introduced by the NRM government in 1986 gained statutory powers codified in two statutes: The Resistance Councils and Committee Statute 1987, and the Resistance Committees Judicial Powers Statute 1988. These two statutes aimed to achieve the following effects (1) transform District Councils into corporate bodies with the responsibility for service provision; and (2) Delegate broad policy-making and planning powers to LCs. The passage of the 1993 LGS and 1997 Local LGA mentioned earlier devolved the planning powers to district LGs and which in theory meant that they ceased to be a direct arm of CG. These institutional reforms gained increased significance by promulgation of the Constitution of 1995 in between the LGS of 1993 and LGA of 1997, which enshrined citizens' participation in planning, and governance of the country. The Constitution 1995 (National Objectives...No. II), among others states;

The State shall be based on democratic principles, which empower and encourage the active participation of all citizens at all levels in their own governance... The State shall be guided by the principle of decentralisation and devolution of governmental functions and powers to the people at appropriate levels where they can best manage and direct their own affairs.

The Constitution further prescribes the creation of a National Planning Authority (NPA) in section 125 and LGA, 1997 section 36 stipulates a counterpart institution at the sub-national level as the District Council to perform the role of the NPA. The LGA 1997 also stipulates a District Technical Planning Committee (DTPC) chaired by the CAO. The law mandates the District Council (in their role as District Planning Authority) to prepare comprehensive and integrated development plans incorporating plans of lower level LGs for submission to the NPA. Formally, all projects including construction projects are identified and developed as part of this National and LG planning process.

It is noteworthy that the national planning process involves political, technical, civic, private, and diplomatic actors with differing orientations informed by both their domicile institutions and personal interests. This builds tension in the final budget document preparation for submission to parliament. Often budget ceilings for line ministries are set in an *ad hoc* fashion, reflecting political but not necessarily economic priorities. The President's manifesto and other pledges influence the outcomes. The donor community have responded by ring fencing their support to poverty eradication programmes which translate into conditional grants to the LG.

Institutions influencing CG planning

At sector level, each ministry is responsible for prioritising expenditure and investments within the budget ceilings set by MoFPED. The budget policy and evaluation unit, the institution responsible for budgeting under the MoFPED provides line ministries with general project identification, preparation and evaluation guidelines. Respective line ministries issue specific guidelines for construction projects. Construction projects cycle of planning links to national planning as shown in figure 5.2.

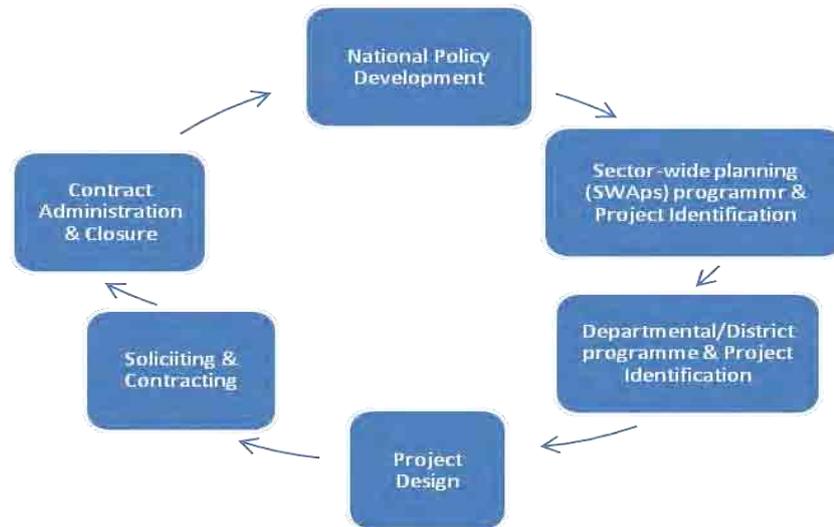
Findings indicate that broad programme identification at CG level derives from Poverty Eradication Action Plan (PEAP), is the basis for strategic planning operationalised mainly by Medium Term Expenditure Framework (MTEF). Within sectors, periodic Sector Wide Approaches (SWAs)¹² to policy development and planning are undertaken.

Dedicated Sector Working Groups (SWGs) prioritise programme areas and projects within the respective sectors. Resource allocations agreed with the MoFPED per sector are budgeted to programmes. The cost estimates developed within the SWAs are of general nature, the specific project identification and design is performed by individual user departments within

¹² SWAs a framework of planning which puts emphasis on programmes other than projects in AID administration

the prioritised programme areas. It is at this stage of individual identification of projects including selection of specific project sites that attract political interference and pork barrel¹³ politics.

Figure 5.2 Linkage between project cycle and national planning in Uganda



Source: Interviews and document reviews

Political interference manifests itself by countermanding prioritisation based on technical analysis such as cost-benefit or cost-effectiveness analysis, or econometric analysis. An influential politician from the CG can order a contractor on a field project to embark on a new project (spot contracting) informing the client (line) ministry of the new project contract in retrospective. This phenomenon of reverse contracting can be rampant towards or during an electoral year. One respondent who is a secretary to a ministry CC noted

Then the other area of deviance of course we ... sometimes get political pressures. You find politician X goes and makes a pledge and says I want ABDC, ..., in place by this time – So by the time the thing even comes to the Contracts Committee, may be the nearest ... company [contractor] has already been ordered to start works So you have no choice, but to ratify the procurement retrospectively.

¹³ Pork barrel is a government project or appropriation that yields jobs or other benefits to a specific locale (site) and patronage opportunities to its political representative

Such political interference is only common with projects funded by government's own generated funds or those by donors under general budget support or sector basket funding (i.e. not project funding).

Medium to large projects such as electric power generation or construction of highways often funded directly by donors get limited political interference. The procedure of seeking donors' 'no objection' approval to progress from stage to stage in the decision making process of government, constrains such political opportunism that is not in tandem with economic priorities or already agreed formal criteria. Indeed such projects dominate at the CG level as up to 65 % of infrastructure expenditure budget is donor funded. This nature of funding therefore drive the allocation on infrastructure spending and hence the infrastructure agenda.

However, CG bureaucrats can strategically include programmes and projects that cater for their peculiar interests. Mwenda (2007: p30-31) notes;

...Because regular pay in the civil service is so low, enterprising bureaucrats with an eye on career enhancement turned to proposing projects to donors. Since writing a project that donors approve normally entails being placed in charge of it, this tactic was a passport to officialdom's elite ranks. ...These projects meant not only increased institutional fragmentation but still worse, wider opportunities for what amounts to a new form of corruption. Civil servants who write projects typically set them up so that a project's main benefits go to its staffers in the form of salaries, allowances, official cars, and domestic or foreign trips complete with per-diems

Nonetheless, in general, formal institutions codified in the planning procedures influence construction project identification at CG level. The SWAs provide the *systematic* framework for identification of groups of construction projects. Specific project identification often attracts interference through political opportunism by way of selecting the physical location of the project. As already pointed out, the nature or source of funding influences the process. But how are projects identified?

The national planning process and project identification - Central Government level

Based on the discussion in the section above, there are at least two ways by which projects are identified - *systematic* or *unsystematic*. On one hand, the systematic process involves technical planning that give rise to strategic medium and long-term plans. Strategic plans

provide a framework for identification of appropriate programmes and projects that are important to actualise the strategic plans. On the other hand, political expedience and opportunism of actors drive the unsystematic processes of programme and project identification (Potts, 2002).

This study found that systematic planning is important in construction programme and projects' identification generally. In 1995 with the assistance of the World Bank, Uganda embarked on the development of a Comprehensive Development Framework (CDF) strategy with the overall objective of wiping out abject poverty in the country. This process yielded the formulation of the PEAP mentioned earlier with the aim of reducing the population living in absolute poverty¹⁴ estimated at 44% in 1995 to 10% by 2017 (Muduuli, 2001). Since 1997, GoU has implemented PEAP and revised it every three years. The first PEAP (1997-2000) which initially focused on primary education, primary health care, water and sanitation, agriculture, and rural roads had a heavy component of construction projects. The second PEAP (2000-2004) and subsequent PEAPs have been modelled along the World Bank Poverty Reduction Strategy Papers (PRSP)¹⁵ and benefited from Poverty Action Fund (PAF)¹⁶ for Highly Indebted Poor Countries (HIPIC). All the poverty eradication plans have prioritised pro-poor infrastructure development including construction projects for roads, classrooms, health centres, water, and sanitation facilities.

Based on the PEAP as the guiding planning framework, Uganda has pursued the development and implementation investment plans and programmes based on sector wide policies, investment plans, and programmes. The adoption of this approach and the need to harmonise donor support procedures has led to institutionalisation of participatory mechanisms that attempt to bring together central and LG departments, external funding agencies, Civil

¹⁴ Persons subsisting on less than a dollar per day.

¹⁵ PRSP have been the blue prints of World Bank for eradicating world poverty since 2000.

¹⁶ The PAF is a ring-fenced fund, which targets social sectors and excludes defence and public administration expenditure

Society/Non-Government Organisations (CSOs/NGOs) and Private Sector (PS) to some form of discussion forums. In the process, implementation of the SWAps has created quasi-governance structures such as SWGs, periodic Sector-Review Conferences and other consultative mechanisms of workshop-like events leading to what has become a ‘workshop’ economy (Amis, 2002).

The outcomes of the consultative processes are a basis for sector plans and provide a framework for identification of programmes and projects that enter the national annual budgets. These institutional arrangements have strengthened linkages within and across sectors, which have contributed to a more participatory budgeting process than before the enactment of the 1995 constitution. The participatory mechanisms have provided a high density of interactions. Table 5.3 below depicts events in a typical annual budgeting process;

Table 5.3: Overview of Uganda’s Annual Budgeting Process

Order of events	Activity
1.	Line ministries submit Budget Sector Requests (BSR) to MoFPED (September)
2.	MoFPED assess the overall macroeconomic situation and available resources from tax revenues and donor support (September/October)
3.	MoFPED sets budget ceilings for line ministries based on historical expenditure trends reflected in BSRs and alignment with policy objectives
4.	Sector working groups meet and agree on sector expenditure priorities – composed of representatives of line ministries, private sector, donors and other stakeholders (October/November)
5.	Line ministries submit budget requests to MoFPED
6.	MoFPED consolidates budget requests into matrix/log frame, reviews and consults with line ministries as necessary, determines final budget ceiling for each sector
7.	The Development Committee for MoFPED approves projects for inclusion in the Public Investment Plan (PIP)
8.	National draft budget established (March) and submitted to cabinet (by April 1)
9.	Cabinet endorses budget
10.	Budget tabled to Parliament (June)

Source: Compiled from interviews and document reviews

State and non-state actors engage in more than ten formal regular planning meetings. These exclude occasional consultative meetings such as with international donor missions. These participatory mechanisms have created opportunities for informal dealings among and

between the government and representatives of development partners¹⁷. Amis (2002:p25) observes, “...*firstly Kampala is a “small town” almost all the donors are on the same “social circuit” and that both formal and informal meetings are very easy to arrange or happen by accident.*” The interactions are not restricted among donor representatives but between them and the rest of the government bureaucracy and civil society.

This density of interaction creates opportunities for bridging and linking social capital as was discussed in chapter two. I argue that these interactions have given Uganda a rare high level of cooperation in the development fraternity. Amis (2001:p25) observed the same phenomenon from more than one respondents –both heads of bilateral missions “donor collaboration is as good as it gets/or that I have ever experienced”.

The various formal and informal meetings that have become common in the development fraternity facilitate the social capital formation. Frequent workshops are one form, which has helped increase the density of interactions and contributed to social capital accumulation. Whereas one should view the developments as positive for the country; one has to be aware that linking social capital can also breed client-patron relations that could breed negative effects such collusion to promote projects that may not be in the best of public interest or to privilege certain consulting firms as is discussed in the next two chapters (six and seven). These procedures at the CG level are supposed to be replicated at the LG level to which the discussion turns.

Institutions influencing project identification -LG level

Interviews and document reviews reveal that LGs undertake limited strategic planning relying more on the national planning process. This is in spite of comprehensive legal provisions granting planning autonomy to them. One of the main limitations to exercise the planning autonomy is lack of own generated financial resources. LGs have progressively been relying

¹⁷ Development partners is a collective name for donors, UN agencies, NGOs and others who support government development programmes

on grants from CG other than own locally generated resources. Table 5.4 depicts a trend in which local governments have been losing financial autonomy.

Table 5.4: Composition of local government revenue (percentage)

Type of Revenue	Fiscal year						
	1997/8	1999/10	2000/1	2001/2	2002/3	2003/4	2006/7 (Estimate)
Own source (LG)	128.9	119.7	109.4	94.2	100.7	114.2	66.6
Grants	224.9	285.2	502.0	610.9	657.1	726.7	863.8
Own source as % of total revenue	36.4	29.6	17.9	13.4	13.3	13.6	<7.2
Total grants ¹⁸ as % of total revenue	63.6	70.4	82.1	86.6	86.7	86.4	>93
Total LG revenues	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: DEGE Consult (2007:p27)

Financial transfers from the CG include unconditional¹⁹, conditional²⁰, and equalisation²¹ grants but the largest proportion is conditional from ring-fenced funds by donors as pointed out in the previous section. Locally generated funds average about 5-25% of total public expenditure at the LG (Saito, 2008; Golooba-Mutebi, 2008; Mwenda, 2007).

The reality of fiscal structure at LG level is deterministic in the sense that LGs implement projects, construction projects inclusive, prescribed in the CG conditional grants. The CG conditional grants for physical infrastructure have prioritised classrooms, roads; health centre construction, and water and sanitation projects. In these circumstances, LGs respond by selecting sites for particular projects. A former CAO, now Under Secretary in a CG Ministry noted of LGs

At local government, central government determines which money, which projects ... Yes, those ones are simple projects because the central government gives them the parameter. If the school does not have this, has this population, it has no this, it has this, it has that. So, you go to every school and evaluate and you rank them. ... that is how they do it in local government. So the guidelines and scores are there. Prioritising which school should come first – there is a criterion by the ministry guidelines. You score marks. It does not have a pit latrine, you score. It does not have

¹⁸Grants include both nationally generated resources and external support from donor

¹⁹**Unconditional grant** is a block grant that funds decentralized services. It has both wages and non-wage. This funding constitutes about 11% of Government transfers to local governments (The Constitution, Article 193; and the LGA 1997 section 84 (2)).

²⁰**Conditional grants** are funds given to Local Governments to finance programmes agreed upon between the Central Government and the Local governments, and spent only for the purpose and in accordance to the conditions agreed. This funding constitutes about 88% of Government funding to local government

²¹**Equalization grants** are transfers to some local governments lagging behind national average standards of particular services such as education, roads, water, health and agriculture extension forms about 0.5% of total transfers (Clause 4 of Article 193 of the 1995 Constitution).

this, you score. By the time when you total, which will give you a certain average, then that is the school to prioritise.

Line ministries issue technical criteria for identification and ranking of project sites for development. Some guidelines specify even the BOQs. However, a LG may identify and fund construction projects outside the prescription of CG if they are able to mobilize local revenue. Such projects have been office block construction projects. In other instances where unconditional funding is given to LG, local decision-making dynamics can take over as discussed below.

Less restricted funding to LG has been the Local Government Development Funds (LGDP) because it is an instrument based on three year rolling District Development Plans (DDP). They are in the form of budget support (unconditional grants) to the district, giving the LGs latitude to identify their priority projects and consolidate them in form of DDP. Infrastructure projects dominate because of their visibility and attention they attract from voters for the local politicians. It is common to see a councillor riding on a grader during road construction so that such a politician can earn political capital from the construction works. Because of the visibility of construction projects, the political process interferes with the technical process of project identification. *Pork barrel* politics take over and the most powerful politician can cause inclusion of particular school or roads into the annual budget irrespective of its merit on the technical evaluation criteria or any guidelines from CG ministry. A respondent commented;

...the formal one is first of all – a project is included in the planning phases, that a project is identified through participatory planning by stakeholders, depending on the level it will be, and then it is incorporated into the development plan; then the budget and work plan...However, you find that project identification go beyond technical evaluation. Politicians may even bring in school [project] which you would think technically it did not pass, but they influence and you find yourself building such a school [project] because the District Chairman comes from that area

A District Education Officer, who insisted on technical criteria, had refused to include construction of staff houses at a school close to the home of the district chairperson; in the end had to yield on counselling by the CAO. The Chairman went around the district swearing “...*nkwiya kugwa nomuntu*”-literally saying he would go down with someone before he left

office at the end of his term. Such subtle pressure makes sticking to formal technical criteria very difficult for civil servants employed by the same council. Politicians can use informal mechanisms such as threats, public criticism of civil servants' work to beat them in line with their particular interest. A District Speaker who at the same time has a proxy company that bids for contracts mentioned that, whenever excluded from a round of contracts award, he threatens to "beat the tins" –to whistle blow on the weaknesses of the civil servants concerned and has been an effective tool for his firm to win contracts.

Therefore, on participatory planning particularly at LC I or any level within the LG, it may not fully reflect the will of ordinary citizens. Participatory decision making at grassroots or 'pavement/street' level tends to be less effective. One of the reasons is ordinary citizens often lack expertise and broad experience to make good decisions, let alone to articulate their needs. In the process, strong people (local elites), often the political actors pervert what should have been local democracy into miniature autocratic domains (Fung, 1999; Francis and James, 2003; Saito, 2008); and the second is "participation fatigue". The effect of increased expectations that came with the initial stages of consultations followed by disappointment because of limited resources has tended to dash the faith of grassroots people that their ideas matter. In other words, there is little trust in the formal institutions to deliver the promises occasioned by informal interference but also limited funding. Under these circumstances those better connected (linking social capital) take control in a phenomenon of 'local elite capture'.

Authority of civil servants and the power of politicians in planning processes

The procedure of staff recruitment at LG level has had influence on project identification and design. The LGA 1997 provides for a DSC appointed by the District Council on recommendation of the District Executive Committee as earlier pointed out. Interviews and observations reveal that LGs recruit mainly (the exception generally cited is Bushenyi

District) from among people who are indigenous in that district. Two factors can explain this localisation of civil servants recruitment in the districts: (1) Ethnic conflicts often precede creation of new districts and so they carry undertones of management of ethno-linguistic conflict (Triesman, 2007). The local elites who spear head such a project expect rents through jobs and contracts for themselves, their relatives, and supporters. Attitudes of marginalisation in the past can persist for many years. An official of a district which has been in existence for over fifteen (15) years still refers to marginalisation as indeed all former colonies still explain many of their problems in terms of colonialisms over half a century ago. This phenomenon of perceived past marginalisation tends to bond such groups to the exclusion of people considered to belong to other areas or to have not shared in their past suffering; and (2) some remote areas find it difficult to attract qualified professionals especially those from other areas.

On attitude of past marginalisation, it tends to engender bonding and less bridging social capital. Such communities, will 'gang up'-to try to 'catch (High and Pelling, 2005; Olson, 1982). It can manifest as mistrust or even hostility towards from those outside their community. An attempt may therefore be made by those in charge of resources to 'preserve them' for the "sons of the soil" (Francis and James, 2003:p334) or for 'our people' to the exclusion of others. The rest of the society expects that their political elites will undertake this role of appropriating resources to them. Indeed, on one hand, one can consider their views as *bona fide* because arguments for decentralisation hinge on a *more responsive* government that is spatially and institutionally closer to the people. However, on the other hand the national legal regime is intended for national integration, equity, competition, fairness, and getting the prices right. Interpretation of equity and fairness can be left open depending on context and can create space for local level coalitions to 'adapt' its interpretation to their interests (Tsai, 2006; Krug and Hendrichske, 2008).

Due to the resultant staff recruitment behaviour, indigenous people tend to dominate in the local government bureaucracy and end up acting like politicians by favouring their local areas (village, sub-county or county) of origin in selecting construction project sites. A former chairperson of a District Tender Board²² (DTB) and District Finance Committee recalled

...I remember in certain years, we took technical evaluation reports by the District Engineer for granted. A certain district engineer abused this trust. By the time the district leaders woke up, all primary school construction projects were concentrated in a certain county. Almost all primary schools in that county were in permanent materials while other counties schools were still grass thatched.

Furthermore; all the schools in question were founded by a faith-based organisation of the Engineer's denomination, in district with many schools founded by different denominations. One can explain the finding on the behaviour of the District Engineer in part under social capital theory of the strand of bonding explained in the conceptual framework in chapter four. Bonding social capital assumes that people will tend to be insular to the exclusion of others in reciprocating benefits. The District Engineer appears to have been motivated to earn the goodwill of the people of his county and of his religion perhaps paying back for favours that may have been bestowed on him earlier in life. Probably he was hired on the influence of such a religious network. Religious groups are key societal institutions in developing countries in influencing appropriation of resources.

On a broader scale, this particularistic behaviour has tended to be characteristic of Ugandans even when they occupy public offices. Ugandans generally, in the face of perceived threats retreat quickly to their primary social networks of family, clan, tribe, or religious group and not to police or lawyers, or courts. Because these are the more sure way to survive, Ugandans tend to work hard to reproduce them through particularistic behaviour even when they occupy public offices. A public official tends to play to the socially expected role of "*our son/daughter up there bringing the goods home*". This is generally rewarded and glorified.

²² DTB responsibility was to award contracts. The LGS 1993 and later the LGA 1997 provided for DTB as political appointees and the LGA 2007 replaced DTB with Contracts Committee (CC) who are civil servants appointed by the District CAO.

Indeed one civil society leader interviewed explained how the sublime local sayings reinforce and glorify some informal institutions even those in direct conflict with the law. “*Emanzi etera netahya muka*” –literally meaning, a hero or heroine is the one who ‘fights and brings spoils home’. It is common in Uganda for disgraced persons at national level or even international scene, for embezzlement, to be protected with large public demonstration in their support when faced with prosecution or rewarded with an electoral position to parliament or district council depending on what supporters perceive in terms of whether embezzled resources were invested in projects that brought them some benefits.

These explanations also match the theories of representative and street-level bureaucracy. The theory of representative bureaucracy assumes that a bureaucrat or a group of bureaucrats are more likely to make decisions that benefit the clientele they represent even more effectively than a politically elected representative (Meier, *et al.*, 1999; Mosher, 1982). This behaviour of bureaucrat(s) is possible where discretion exists as in the case of a District Engineer who has many decision powers in the construction project cycle (see section 7.4) in particular but also in the LG planning process. Table 5.5 below depicts steps in the planning process at LG level, which offer such opportunities.

Summary of institutions influencing national planning and project identification

The national planning framework both at the centre and at the sub-national has institutionalised a participatory approach of involving stakeholders. Donors are part of national planning process through formal structures such as SWGs, periodic sector reviews, and positioning of Sector Technical Advisors in various strategic offices of importance to national planning process.

Procedures codified in form of guidelines, minutes, and administrative instructions drive the process.

Table 5.5: A summary of Key Steps in the Planning and Implementation Process at LG level

Timing	Key activity Description
July – Sept.	Dissemination of Indicative Planning Figures (IPFs) from the Centre to <i>departments</i> and Lower Local Governments (LLGs) Agree on the planning process and roles
Oct – Dec.	Review of previous performance situation analysis per sector and LLGs Gender, livelihood, environment and poverty analysis based on inputs from LLGs. District Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis Review of the vision and goals Identification of priorities per sector and priorities for the 10% flexibility under Fiscal Decentralization Strategy (FDS)
Jan – March	Budget conference held Consideration of LLG priorities Formulation and submission of the Budget Framework Paper (BFP) to the Local Government Finance Commission (LGFC) 31st Jan. 2005
April – June	Development of Investment profiles per department and project Mentoring and supporting of LLGs to roll the development plans Review of the investment profiles by the standing Committees Compilation of the Plan by the District Executive Committee (DEC) Approval of the Plan by the full council Prequalify suppliers and service providers for the next Fiscal Year (FY)
July – June.	Planned feedback to LLGs and departments (Dissemination of the Plan) Develop departmental work plans including annual procurement plan Design and detailed specification of construction projects Solicit bids from prequalified bidders Award construction Construction project contract administration/supervision

Source: Adapted from Debt Network (2006)

The MoFPED is central in the planning and budgeting process. The donors as a group are influential in the finance ministry and indeed in the national planning process due to procedures adopted. One wonders who actually runs the MoFPED. Amis (2001:p9) put two similar questions “...who runs Uganda? ...who runs the Ministry of Finance?” These questions were prompted by a high presence of “Technical Assistance (foreign personnel) in the Ministry [of Finance]” and in many other PEAP related sectors. The answer to questions point to agenda setting “...in a globalised and Bretton Woods determined world” (ibid: p9). The study found that donors exert more influence in the strategic planning process but less formal and direct influence in project identification due to the institutionalisation of aid instruments such as budget support. However, for large projects requiring large sums of money, donors still exercise informal influence through key decision makers in the Ugandan bureaucracy.

At the centre, the institutional system enforces the development of national planning framework as codified, and provides a general framework at the sub-national level. However, there are differences in informal practices at the two levels. At the sub-national level, the input of ordinary citizens is limited. As already observed elsewhere, a number of factors conspire for their limited input and instead preferences of a coalition of political as well as technical (civil servants) elites dominate in decisions as to what projects and where to site them is concerned. Even the choice of technology depending on what they consider beneficial to themselves. A remark by a former CAO on deciding to promote a technology he deemed effective but was out of local capacity to participate in as contractors is revealing

...I brought in these crest tank [plastic fabricating company] to construct ...pit latrines. Eh, I nearly went through the window...because I was denying some local people to build pit latrines. The fabricated slabs, you just put them together and you have a pit latrine. They threw them out. They wanted to build with bricks [local materials] ... Because the money is for a local contractor who is going to do, slabs [concrete], It is unwritten but everybody knows. It is like the British Constitution. It is not written but they know it. So local government have their unwritten constitution and they go by it. Contracts exclusively for the local people!

The phenomenon of elite dominance in location of construction projects is generally known and expected. Jostling to benefit from construction projects generates intense competition as to who occupies what position in the LG structures.

At the centre, construction projects are generally bigger than those undertaken at the LG level. Because of their size, construction project funding often has dedicated donor and GoU counter funding and not subsumed in budget support. This phenomenon adds extra procedures in the identification and appraisal of such projects. The common requirement of 'no objection' by donors to progress a project from stage to stage limits informal ways of interference in project identification and appraisal as pointed out already.

In general, the technical criteria used to identifying and appraising projects may in some instances be manipulated to suit decisions made on the basis of other considerations such as appeasing or punishing a political representative of a particular area. An official of a central government department remarked; "You see the Permanent Secretary can call you to his

office and direct that you do something to ensure a certain project [construction] is done in a particular area because it is a presidential pledge and the Presidential Advisor on Manifesto has demanded for it". Even at the local government level, an engineer can be instructed by politicians to select road projects, classroom or health centre construction projects according to a short list developed by the District Executive Committee. However, at the central government level there is less interference by politicians because of the involvement of donors. Often decisions are made based on technical analysis of consultants and reports are discussed in SWGs where different donors are represented. Because of the professional calibre of members of such working groups, it becomes difficult to manipulate. Manipulations are more likely where donors are not involved such as when government is using its nationally generated resources.

In order to understand the nature of implementation of outsourced construction projects, it is necessary to trace the evolution of public construction sector in Uganda. Accordingly, the next section deals with evolution of construction industry in the country in order to identify how current institutional environment has developed.

5.3 Public construction: evolution of buy option in Uganda

The recorded history of public sector procurement of construction projects in Uganda begins with the Crown Agents (CA), set up by British Colonial Office (CO) in 1833. It gives an illustrative comparative example of public sector outsourcing, instead of 'own force account' -in -house' or 'departmental' system of construction (Barrie and Paulson, 1992; FIDIC, 1999). The CA acted as the British commercial and financial agent of the Crown colonies and protectorates. It was a requirement by CO that all Crown colonies and Protectorates use its services (Sunderland, 1999). According to Sunderland, CA mandate covered

...supply of all non-locally manufactured public sector stores, organised the provision of external finance, managed colonial investments; supervised the construction of railways, harbours, and so on; and performed various personnel functions, such as payment of pensions and some salaries (ibid:p284)

One can argue that CA originated outsourcing in the colonies. With "...a small staff of 33 in 1881 and 468 in 1914... [t]he Agents employed a shipping agent, a packaging company, a firm of solicitors, consulting engineers, and a broker". (ibid: p284). However, owing to financial distraught caused by changes in the colonial office policies towards colonial infrastructure projects, CA abandoned use of contractors and private firms in order to increase their returns during railway construction in 1896-1908. All phases of construction management were brought under the brief of the Agents' engineer (own force account) with hidden dangers that seem to have gone unnoticed as described by Sunderland (1999:p299)

Shelford [engineer] both provided the surveying information used by the CO to determine whether projects should go ahead, and, if so, the standard to be adopted, and also built the lines and after construction gave the railway managements advice on repair and maintenance. It was thus in his own interests to use the hidden information of his surveys to encourage construction and the building of expensive projects. He therefore underestimated the likely cost of projects, overestimated expected returns, and supported the construction of high standard railways able to handle the predicted heavy traffic levels. Since Agents also benefited from construction, they fully supported their engineer's conclusion.

This structuring of construction project management by CA resulted in over costs of 10 -78% greater than original estimates and far more than the cost of other railways built in similar conditions. "The system failed even to ensure quality of construction" (ibid: p299). So one may ask, is in-house sourcing of construction projects fundamentally wasteful or is outsourcing always more efficient? Is the question over simplified or it depends on the project environment of institutions and actors involved? How do these institutions influence the process and why? The latter question forms the subject of this study focusing on two sub-contexts, the central and local government levels of operations in the Ugandan context. The study in particular examines the question; why and how do institutions influence public construction projects in Uganda?

Crown Agents (CA) handed over their operations to GoU after independence in October 1962. The ministry in charge of Public Works inherited construction related functions. Below I outline the evolution of management of public sector construction projects to explain what appears to be shaping the industry.

The period 1962-1977

Crown Agents continued to execute the procurement function for two years after independence until 1964. By that time, government had established two units, one to handle supplies, and the other works. Central Stores dealt with supplies of goods, and works were under Public Works Department (PWD). All civil and engineering works were under the PWD, which serviced the entire country. As a former chief government Architect recounts;

... [B]efore the 1980s, all the processes for construction were handled by one ministry. If for example a particular institution – government, was in need of a building, Works and Housing as it used to be known by name, would be able to look at their needs; assess the costing of building and then be able to ask for money from government [Ministry of Finance] to start the process of design. Because we were not designing ourselves, then we would outsource consultants who would do it and the sourcing of those days was not like it is today. Sourcing was much simpler, and faster. One man who was the chief architect at that time would normally keep a list of consultants in the country that have the necessary qualifications and the experience to provide those kinds of services. So, he would go over his list and choose companies or firms that could do the work. Depending on how many projects there were at that time, he would spell them out. So, it was much simpler.

The relevant laws that regulated procurement in general were the Public Finance Act and Contract Act. Specifically, regulation of works was under two acts: Road Act for road works, and Town and Country Planning Act for building works. These laws regulated construction projects in Uganda, which at the time were mainly in-house projects under the force account or direct labour. A few large projects like construction of hospitals and highways were contracted out to international construction firms and the British legal system as the applicable law. However, following the 1971 military *coup d'état*, Uganda suffered international sanctions and economic decline. By the time of the regime overthrow in 1979, the economy was near collapse with virtually no public construction works going on (Brett 1994; Nkurunziza, 2004).

The period 1977-2003

In 1977, the Public Finance decree was amended providing for the creation of Central Tender Board (CTB) and accompanying procurement regulations. Any government procurement contract above the threshold of US\$100 was handled by CTB in the Ministry of Finance. The

military and Police were exempt from the CTB and had separate tender boards set up under the Uganda Peoples Defence Force Act (UPDF) 1992 and Police Statute of 1994 respectively. Ministry of works continued to be the central administrator of public works. This central procurement by CTB, although offered the advantages of consolidated purchasing and central control, was inefficient. It was unable to cope with the demands of government activities, backlog of tender submissions and the procurement process became protracted (Agaba and Shipman, 2009:p396) and infested with corruption. A review by a commissioned Government Task Force on Public Procurement Reform (1999:p14) stated;

There is still a lot of corruption in our public procurement system. Most of this corruption is not known because it is done in utmost secrecy. It is, however, manifested in wrong computation of costs by evaluating teams, shoddy commodities and goods, poor performance of construction works, failure to complete performance of contracts on time or not at all, ...

Earlier, beginning with 1993 under the LGS of 1993, government on a pilot basis, delegated the procurement function to a select group of LGs. In 1997, LGA passed into law enshrining LGs in the 1995 constitution. The LGA provided for appointment of a District Tender Board (DTB) by the District Councils. The DTBs were responsible for the procurement of goods, services, and works for their respective districts without recourse to the CTB. Essentially, two parallel systems emerged, the LG system under DTB, and the CG system under the CTB. In 2003, the PPDA Act to bring all public procurement under one system was enacted, aimed at bringing public servants and business community under one regulatory framework in order to attain fairness, competitiveness, transparency, accountability and efficiency (PPDA Act, 2003).

The period after 2003

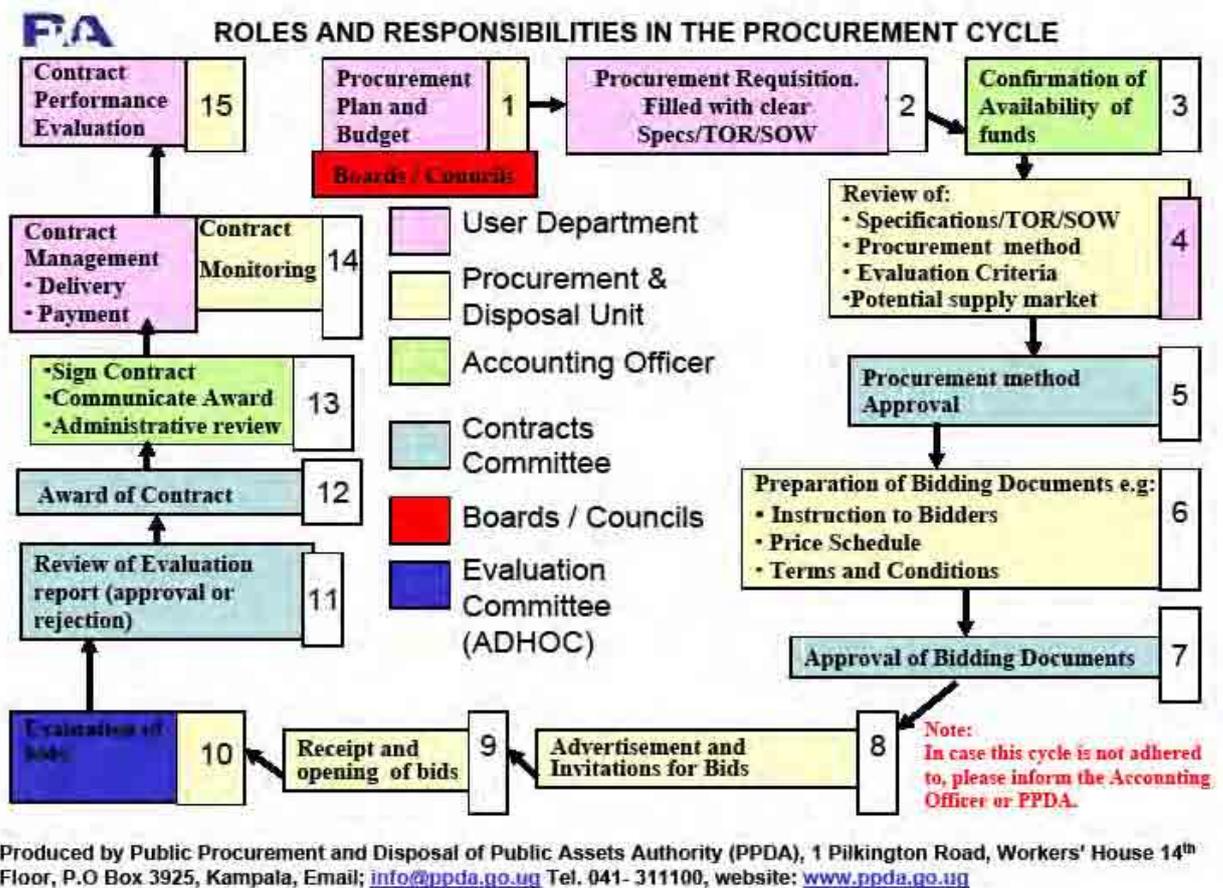
The PPDA Act 2003 established an autonomous regulatory authority, the PPDA, whose main functions are as follows:

- Training and capacity building
- Provision of advice on the law and consideration of applications in particular procurement cases

- Compliance monitoring and assessment
- Procurement audits and investigation of alleged malpractices

The procurement law provides for separation of powers and responsibilities among major actors in the procurement process. Figure 5.3 illustrates the relationships

Figure 5.3: Responsibilities in the Procurement cycle



Source: PPDA website accessed 2009

According to the schematic flow roles and responsibilities, the public actors function as follows:

- National Parliament or Boards or Local Governments and/or Urban Authorities who are mandated to approve budgets should as well approve the procurement plan that would include the physical infrastructure development

- Accounting officer (AO) a in a Ministry or agency is responsible for ensuring the proper functioning of the system, should be consulted regularly by head PDU, and approves/disapproves recommendations from other organs of the PDE.
- Contracts Committee (CC), comprising public servants who approve each stage of procurement or disposal process and decide best evaluated bid Procurement and Disposal Units (PDU) comprising procurement professionals who act as a secretariat for procurement activities
- User departments (UD), which initiate the procurement process and participate in evaluation of bids

The PPDA Authority issues more detailed prescriptions (regulations and guidelines), aimed at standardising operations in an orthodox neoclassic style. These prescriptions are supposed to form part of the institutional framework.

The legal framework within which the construction sector performs is a complex one. In an attempt to simplify it, I describe some of the important elements of the legal environment that is a source of formal institutions. These elements are gleaned from legal documents review and are given below. They will be followed by an overview of types of informal institutions in Ugandan construction sector.

Source of formal institutions for construction sector

First, the public sector outsourcing of construction projects in Uganda is part of the public procurement system of the country. The procurement function, as a government function, is regulated under the PPDA Act 2003.

Secondly, at the LG level the formal regulatory instrument for outsourcing was initially the LGA, 1997 until 2006 when it was amended to bring the procurement function under the regulation of the PPDA. The amended LGA spells out structures and processes of governance

at that level and the PPDA prescribes detailed regulations and guidelines to be followed. The latest are Local Government Procurement and Disposal Guidelines of 2008. At the time of research, the PPDA Act 2003 was under review for amendment, which perhaps indicates that public procurement, and disposal remains dynamic in need of continuous strengthening.

Combining the professions of engineering project management and procurement

This study recognises that outsourcing of construction projects straddles the profession of procurement as well as that of construction management. The PPDA may regulate the client contractor transactions, but actual construction management has its own set of related laws and regulations in Uganda, and they include:

- The Constitution of the Republic of Uganda, 1995
- The Town and Country Planning Act, 1964
- The Roads, Act 1964
- The Engineers Registration Act, 1969
- The Architects Registration Act, 1996
- Public Service Act, 1969
- The National Environment Act, 1995

Often construction projects include parties from other countries. When this happens, contracts include a clause(s) referring to *Fédération Internationale Des Ingénieurs-Conseils* (FIDIC), World Bank or such other international regulations. The procurement law (PPDA) of Uganda makes provision for alien procurement guidelines and actors often engage in ‘forum shopping’ whereby many conveniently choose which guideline to invoke. One Secretary of a Contracts Committee reported during interview

...we mainly use the PPDA guidelines ... since most of our programmes are donor funded, according to the prevailing regulations, where we are using a particular donor to fund that project, their procurement guidelines prevail. Therefore, in our case, we are mainly using ADB [African Development Bank], so for us – with any procurement where ADB is funding we have to seek no objection from ADB, and we have to follow their rules. Similarly, you also have to follow World Bank regulations when we are using procurement for World Bank projects ...and DANIDA... they [regulations] are different, in that each of those donors has their own ways ...have a list of

countries from which suppliers must be sourced. So, even before you award, you must ensure that the person or the contractor going to do the job must come from those countries...the donors; many of their regulations try to ensure that the process is very fast. For instance, right now, in our Joint Partnership [JP] guidelines, while the ceiling for micro procurements in government is 2 million, if we are to use the JP Funds, the ceiling for micro procurements is US\$10, 000. [17 million]...now, some of those – not all donors subscribe to JPF.

Forum shopping is not restricted to projects with an international element but also some projects at the LG level. For example, there are various lines of support for poverty alleviation. The Poverty Alleviation Fund (PAF) issued guidelines in administration of the fund putting emphasis on how to catalyse local entrepreneurship code named “*Bonna bagaggawale*” –prosperity for all. The *Boanna bagaggawale* interpretation has given some officials of LGs an excuse to exclude firms whose owners are not from that district, something that would violate the PPDA guidelines of fairness, competition, and transparency. But in this case there are parallel official guidelines from an aid instrument to rely on in order to justify why local contractors are preferred. One can reason that the inclination to exclude others already existed; the new formal regulation is only being adapted for that purpose, and hence adaptive institutions.

While the act of preferring PAF guidelines instead of strictly adhering to PPDA guidelines is forum shopping, the interpretation to exclude others is a phenomenon of institutional conversion where by a policy guideline meant for one purpose is ‘adapted’ by a local coalition of like-minded bureaucrats, politicians, and business community for achieving a different purpose. This local elite coalition can conspire to subvert the formal system. Krug and Hendrischke (2008) found a similar phenomenon in LGs in China as was discussed in chapter two. This has become wide spread in Uganda as will be discussed in the subsequent chapters.

In general, there are many formal rules with various organisations that are mandated to enforce them in the public sector outsourcing process of construction projects. Table 5.6 below summarises the rules and responsible actors.

Table 5.6: Summary of formal rules, their source and regulator

Formal rule (institution)	Source	Responsible regulator
PPDA Act	Parliament	<ul style="list-style-type: none"> • PPD Authority • Inspector General of Government (IGG) • Public Accounts Committee (PAC) of Parliament • Engineers Professional Association • Institute of Procurement Professionals
PPDA regulations and Guidelines	PPDA Authority	<ul style="list-style-type: none"> • PPD Authority • Auditor General • Local Councils
Town and Country Planning Act	Parliament	<ul style="list-style-type: none"> • Local Governments
Road Act	Parliament	<ul style="list-style-type: none"> • Ministry of Works
Guidelines on Contractor Capabilities	Ministry of Works	<ul style="list-style-type: none"> • Respective Procurement Entities
Engineers Registration Act	Parliament	<ul style="list-style-type: none"> • Uganda Institute of Professional Engineers (UIE) • Ministry of Works • Engineers Registration Board • Engineers Professional Association
Architects Registration Act	Parliament	<ul style="list-style-type: none"> • Architects Registration Board • Architects Professional Association
Dedicated Fund Guidelines	Frameworks of Cooperation	<ul style="list-style-type: none"> • Respective Sector Ministry
FIDIC (<i>Fédération Internationale Des Ingénieurs-Conseils</i>)/ International Federation of Consulting Engineers Guidelines.	FIDIC (<i>Fédération Internationale Des Ingénieurs-Conseils</i>)	<ul style="list-style-type: none"> • Parties to International Construction Project Contracts • Arbitrator • Uganda Commercial Court
Financial Act and Regulations	<ul style="list-style-type: none"> • Parliament • Ministry of Finance, Planning and Economic Development (MOFPED) 	<ul style="list-style-type: none"> • Auditor General • Inspector General of Government (IGG) • Public Accounts Committee (PAC) of Parliament • Local Councils
Capacity building guidelines	<ul style="list-style-type: none"> • Ministry of Works • Local Government Associations 	<ul style="list-style-type: none"> • Ministry of Works • Local Government Associations
Guidelines on big contracts worth over US\$25,000= (over UGX50,000 million)	<ul style="list-style-type: none"> • MOFPED 	<ul style="list-style-type: none"> • Solicitor general

Source: Compiled from field notes, legal documents and interviews

The formal rules and organisations supposed to regulate procurement in Uganda are probably some of the most comprehensive in Africa. They have been showcased as best practices and other developing countries in the region have been coming to Uganda to find ways of

benchmarking against the system. The question that remains is which other institutions influence the results to be different from what the formal system was intended to yield.

Overview of types of informal institutions in Ugandan construction sector

Informal rules and organisations interact with formal ones as evidence from the field and review of historical documents revealed. There are generally two main sources of informal institutions influencing the process of how outsourcing of public construction projects is actually undertaken: (i) limited generalised trust in formal system and efficacy of governmental organisations by citizens and (ii) general business ethics.

The formal institutional framework for Uganda as a country began with the establishment of a colonial state over a hundred years ago. This process was firmly established by the time of independence and continued to evolve until the era of Idi Amin in 1970s as already pointed out. Amin's era was a *critical juncture* that reversed many gains achieved in formal regulation of most facets of the society of Uganda including the construction sector. Southall (1980:p628) called this era "social disorganisation in Uganda". The formal institutional trajectory evolved up to this time (Amin era) was ruptured over the eight years of misrule and its aftermath of economic and social hardships. "Almost a whole generation of youth... has been led astray into bad habits from which they cannot escape. Many young men of good middle-class background now behave like congenital thieves..." (Southall, 1980:p648). The bad habits (ibid) referred to include 'black market', a mentality for acquisition without equivalent hard work fostered by free properties, first from expelled Asians and later abandoned property by deposed "Amin and his clique"; and loss of trust in the fairness of formal system. Whereas Southall thesis is not a complete picture, there is a degree of path dependency keeping Uganda on this rather undesirable trajectory and tends to pervade public sector outsourcing of construction projects as will be discussed in subsequent chapters.

Limited generalised trust for governmental systems has tended to reincarnate informal institutions even in areas that had been brought under the formal sector.

The construction sector operates in this business environment that has been rated as at 38.2 out of 100 by Business Monitor International (BMI) Ltd. (2010). The low rating has been attributed to high levels of corruption where Uganda's ranking in 2009 was 130th out of 180 countries assessed and third most corrupt among countries affected by petty bribe, according to the 2009 Global Corruption Barometer of Transparency International. This characterisation of the business environment includes "...only a few international companies active in Uganda's construction sector, with the majority of players being domestic or local to the region... lacks professionalism and expertise at times" (BMI 2010: p37). "The majority of construction workers are employed by small firms" (Alinaitwe, *et al.*, 2009:p281

The foregoing typifies the construction sector in general and specific findings are discussed in the subsequent chapters.

5.4 Summary and conclusion of the chapter

The chapter explored the context within which identification and performance of outsourced construction projects occur. The key findings include the following:

First, the national planning process generally adheres to the formal guidelines from definition of national objectives, at the MoFPED level to identification of projects. As opined by Winch (2002) and Thai (2009), this strategic level of planning is part of outsourcing process that leads to identification of projects. It is argued that limited strategic planning is undertaken at the district local government level since the bulk of their funding originates from the central government with attached conditionalities reducing them to more or less administration of central government strategic and policy decisions.

Secondly, findings indicate that there is high donor influence occasioned by the high portion of donor funding of the national budget and their heavy participation in both central and sector-wide planning.

Overall, evidence indicate that while many laws aimed at curbing corruption and attaining higher value for money, neither seems to have been achieved so far. The chapter has described sources of formal institutions referred to in legal documents and government administrative guidelines. These included public policies enacted to liberalise trade and other macroeconomic measures taken by government to enhance economic stability and growth. It is argued in the chapter that the structural adjustment policies and macroeconomic measures taken by governments attempted to change the country's institutional framework, the system of institutions affecting all individuals' behaviour in general. While structural adjustments policies had a direct influence on institutions, the macroeconomic policies have affected the institutional environment through their impact on fiscal decentralisation and excessive reliance on donor funds both at the central and LG levels. These have had their knock on effects on actors' behaviour indirectly leading to institutional changes not exactly as envisaged by the framers of reforms. It is noteworthy that a melange of formal and informal institutions co-exists as part of the institutional framework which presents actors with opportunity for forum shopping. This is further discussed in next chapters.

While the chapter was able to trace national planning up to programme and project identification including the preferred institutional types, it did not specifically treat the institutions influencing selection, design, solicitation, award, administration and contract closure of outsourced construction projects which the next two chapters (six and seven) deal with.

CHAPTER SIX

INSTITUTIONS AND ON *EX ANTE* CONTRACT AWARD OF OUTSOURCED CONSTRUCTION PROJECTS

6.1 Introduction

Whereas chapter five generally set out the institutional framework, within which the outsourcing of construction projects takes place in Uganda and how projects are identified, this chapter six aims at treatment of the sub processes of outsourcing process from project selection to award of contracts. The chapter answers part of the research question; Why and how are actors' decisions influenced by institutions in the outsourcing process in Uganda? How do institutions and social capital interact to influence outsourcing of construction projects and why? In addition to treating part of these questions, the chapter seeks to validate or otherwise annul the hypothesis of this study; *Informal institutions are more likely to influence the process of public sector outsourcing of construction projects at the local government level more than at the central government level due to the nature of social bonding experienced by actors at the local government level.*

The chapter uses primary data collected during the fieldwork, through semi-structured interviews, field notes, focus group discussions and review of relevant literature such as official documents and newspapers (cf chapter 4 for details in methodology) to answer the questions and to evaluate the validity or otherwise of the hypotheses. The chapter argues that two institutional regimes influence project selection, design, solicitation, source selection and award (pre-source to contract award phases) of public construction contracts. These regimes, formal and informal differ in their extent of influence at CG and LG contexts.

The structure of the chapter is as follows: This first section is introductory; the next explicates the *interplay* of institutions and their influence on the processes preceding award of a contract by the client, in particular how formal and informal rules interact to affect design, solicitation

and contract award respectively. As a primer, the chapter begins with discussion of the applicable law and regulations followed by examining institutions *actually influencing* those operations of pre-source selection to contract award. Section three, stitches the subsections in one and two together in a summary and draws some conclusions.

6.2 Selection and design of construction Projects –applicable laws

In the previous chapter, it was argued that project identification is done at two levels, at the CG departmental and LG levels. LGs have corresponding departments with most of the CG ones. Whereas departments at CG level engage in a high degree of broad range strategic planning, LGs appear to be constrained more to administration of grants issued by the centre. Both levels of government engage in some form of prioritising of identified projects in order to select the ones for funding in a given financial year before design can proceed. This section deals with construction *project design*.

Evidence from interviews indicates that construction projects undertaken at LG level are small and less complex than their counterparts undertaken at the CG level. This is because of a generally assumed position of CG that LGs lack capacity to handle large and complex construction projects. Therefore, despite an elaborate decentralised law, which legally empower LGs to plan and execute any size of project, in practice they do not. The reasons as observed earlier are mainly lack of actual financial autonomy. LGs in Uganda lack own generated revenue through taxations and other sources. This is because as observed from the previous chapter, LGs depend on up to 95% and above of their funding on CG grants. The respective line ministries usually retain funds for complex projects for their own execution. For those projects LGs undertake, ministries prescribe standard designs in order to exercise control over project costs and quality. One district engineer remarked

...Actually primary schools, health centres – there were some universal designs because if they talk of health centre II, everybody should know what it involves including the physical plans. ...the ministry brought those designs we have them for the primary schools, the design, the size of a classroom, how it is supposed to be, the pit latrines, those ones we have. Even the cost estimates, because... who ever does the design; he has to cost the project.

This prescriptive tendency by the CG couched in ‘mistrust’ in the capacity of LG, creates tension between national standardisation efforts and adaptation to local conditions of project design and costing pointed out in the last chapter. Interviews with Engineers at LG level indicated that they adjust the design and costing to be more appropriate to local conditions which include factors such as seismic, geological, and hydrological conditions. Generally, administrative orders by the CG departments are not legally binding on *autonomous* LGs. They are therefore not enforceable legally although administrative fiats can be applied through manipulation of funding.

Legally, LGs are mandated to undertake any size of construction project. However, due to financial constraints, there are limited large projects identified and financed by the local governments. The few observed projects included construction of office blocks for district, municipal, town, division or sub-county headquarters. In these cases, LGs choose their own designs with projects funded from their locally generated resources. They can exercise choice over designs and may outsource consultants. This is a leverage point for actors to exercise forum shopping.

In practice, interviews with respondents at the LG level, and document reviews revealed that consultants are rarely hired for project design. They use mostly in-house expertise of their engineer(s) and drafts people. The reasons for limited use of consultants vary from a need to minimize costs, and a desire by District Engineers to gain undue control over the projects. Overtly, LGs argue that hiring consultants when they have engineers is an unnecessary extra cost. It appears that avoidance of consultants is due to pecuniary interest. One former long serving District CAO currently a senior administrator at the CG level observed,

Both local government and central government may avoid consultants [Consulting Engineer] especially local governments because of the costs involved. Therefore, they normally rely on their engineers...such a supervising engineer could have been the one who designed it and drawn the bills of quantities. What things they put there! When it comes to implementation, this is where their role comes in. I put there 200 square metres land fill, but you have done only 100, give the equivalent of the difference to me.

Some District Engineers, who are the principal representatives of government in relation to construction projects, echoed this observation by the former CAO. A number of District and Municipal Engineers interviewed prefer to do the design because it gives them extra power over the construction projects. Engineers admitted that they often strategically develop Bills of Quantities (BOQs) with in-built excess costs for earning “*enjawulo*²³” [commission] from contractors during supervision of the contract. This is particularly so at the LG level where there is a general shortage of engineers. A District Engineer remarked

– actually all the stages [of construction projects], apart from may be the award where I don’t participate in the contracts committee, but in the appraisal, I am there because I have to come up with a technical report which I present to the sectoral committee, that is the political side and then they look at it and pass it, then from there we go to the design of those projects proposed, from the design we prepare the bid documents, and then from there, ... they advertise, we receive bids and evaluate them, I participate in the evaluation, I am actually the chairperson of the technical evaluation committee. When we produce our report, we give it to the Contracts Committee to go on with the award, then after that, we sign contracts and supervise the contractors. Actually, because even the sub-counties are – we supervise their projects, because they do not have the engineering departments at the lower local government levels

Apparently, whenever an institution allows an engineer to combine design roles with implementation, it invites wastage in construction projects. This was the case with Crown Agents (CA) over a century ago as was discussed in the previous chapter and has been the subject of public sector reform as was discussed in the literature in chapter 3. However, contrary to the notion in literature that its agents (contractors) who act opportunistically, bureaucrats can also seek rents in their roles as representatives of public clients. These cases of engineers manipulating bills of quantities (BoQ) are opportunistic. The behaviour is tenable due to the combination of roles that tends to produce unsatisfactory results. In one of the districts, a former Chairman of Finance Committee and DTB remarked

...you can see our administration block, a dwarf building...the engineer who designed that one is our District Engineer, and he did it himself. He did not want to hire a consultant ... While the same money would even have built a better and storied structure if it was somebody who was widely exposed. That is my feeling.

From such an observation by a senior local politician, one would hope that over the years new institutions would emerge as more and more public actors abandon parochial outlook to issues

²³ *Enjawulo* means difference in the local dialect and generally understood as rent public servants earn from contractors when they negotiate government contracts.

and insist on adhering to formal procedures. This is a view expressed by the retired Minister of LG who presided over most of the LG reforms of the 1990s in Uganda and has had almost 40 years in national politics. He had projected that in about two decades through a learning process and close supervision, LG actors would learn from their mistakes and improve the efficiency and effectiveness in their jurisdiction. He observed that government was rushing to reverse decentralisation and points out

Any tender board anywhere – even the central is politically appointed. Who appoints the central tender board, for example? It's ... the President and Cabinet. These are politicians, so it is the leadership that sets in place these different institutional organs. So, what goes at the centre is what we were trying to build at the lower level, because it is a government itself. A district government is a government operating the same way the central one is doing, same responsibility. Alright? Similar, more or less. But we wanted to build that capacity because the essence of decentralisation was really not to be the academic way of looking at devolution but the real meaning of devolution, give them all the powers and you know you will remain with supervision, and monitoring. That was what was behind. But we also knew that this would take a bit of time. It was not something easy, put as if you are doing a project and at the end of it there is end of project.

So, this particular aspect which you are asking was one of the capacities that we wanted to build at that lower level of government, because they could take the same decisions, that are taken at the centre in respect of their own localities, but as far as I am concerned, they were not given a chance. They were judged prematurely. No effort was made to make sure that they are established, but on the contrary because of what I consider as pecuniary interests and political interests, they rushed into – gave as example this or the other, and we decreased the powers unnecessarily. It was not necessary.

It was only necessary to use the institutional safeguards that were an issue, entrenched within the law, the different audit provisions, the supervisory provision, that was the role of the Auditor General, there was the role of the IGG, there was the role of the Parliamentary Public Accounts Committee, of the Ministry of Local Government itself, and ...at the centre, you know. All these were to work in a synchronised way, in building this particular capacity.

So, for me I thought that after 10 – 15 years, then the thing would be set and all the loopholes as they called them would be looked into.

The lamentation of the former minister on LG reform reflect his belief that policy reforms once in place would evolve through some form of 'self-cleansing' to be fully instituted.

However, a secretary of a CC at a district expressed frustration

...there are so many structures involved, so many stakeholders involved. Say if the IGG delays enforcing, then the PPDA will come up, local government [CAO, internal audit] will come up, Auditor General will come up, the district council will also come up. There are so many checks and balances. But things still go wrong so often, I don't know why?

This official who was also the head of a district PDU was questioning the effectiveness of oversight agencies to enforce formal regulations. A similar comment by a Deputy CAO who was posted to a district at its inception sixteen years ago expressed surprise "...when we began

we tried to adhere to formal regulations but I have noticed as years have gone by we are more and more casual with the law”.

It therefore appears that effective regulation of outsourcing construction projects may not be a matter of a general procurement law *per se*. What this seems to suggest is that special attention needs to be paid to the other institutions that influence actors in the value chain of public sector outsourcing of construction projects. In the following sections I discuss institutions that seem to actually influence design of construction projects.

Sources of institutions for project design

According to engineers interviewed, two formal institutional regimes influence specifications in design (1) building codes issued by the Ministry of Works and Housing (MOW&H) and are divided into general and specific guidelines. The general codes are headlines and the specific are the details under each headline, (2) the international institutional regime mainly of British standards because of the legacy colonisation. Others are specialised guidelines particular to dedicated buildings such as prisons for which World Health Organization (WHO) issue standards such as space per prisoner.

Administration of design rules for buildings codified in the Town and County Planning Act 1969 empowers LG Authorities to regulate building construction. Engineers and architects agree that there is a high level of compliance with both the national and international institutional regimes for design of public construction projects at the CG level. We come back to this point in chapter 7 which discusses in detail the extent to which actual construction complies with approved project designs.

Designers of public construction projects are susceptible to strategic actions intended to reap rents during project execution when they know that they have a role to play in implementation. This is probably the reason LG use consultants sparingly. On the other hand

CG departments are obliged to use consultants especially where donors are funding projects directly as it is normally part of the funding protocol. Also technically, as was discussed in chapter three, it can be very difficult to implement a large and complex project if preliminary and detailed designs have not been carefully undertaken (Barrie and Paulson, 1992; Mortiner, 2007). A senior CG engineer with over thirty years experience supported this view

Laws really give you a guideline on how to proceed with any particular activity or action. But the details, you must work them out yourself. For example, one of the issues that is very contentious in procurement or when you are looking for services is have you described these services properly. That is about specifications. And really this is where the issues are. If you do not specify the services and the goods you want, you can get a raw deal or you can get something, as close as possible to what you wanted. So the issue is have you described the details? So, if it is a project, the conception must be proper and the procurement process must also be clear. In construction, the issue is what is the quantity? What is the quality? So this is where quantities and specifications of the quality of goods and services you want.

Being able to specify construction works to a degree where all requirements are clearly spelt out and costed in a contract is difficult as was pointed out in the literature and alluded to by a respondent above. Nonetheless, a form of specification that facilitates measurement of contract performance is vital as it is important in minimising the cost of supervising such a project. The clarity of performance indicators lowers the necessity for close supervision and risk of disputes thus lowering transaction costs (North, 1990). Evidence from the field indicates that the skills of proper specifications are scarce in Uganda as indeed the engineer intimates above. Therefore, consultants for large and complex projects become imperative for proper design, costing and management of disputes, after award of contracts. At CG level consultants are used quite often. Nonetheless, even with the use of consultants the incompleteness of specifications remains and that translates into incomplete contracts (Hart, 1988). Because of this incompleteness, trust becomes an important factor to minimise transaction costs particularly when dealing with less complex projects. In the sections that follow, analysis turns to how institutions influence sub-processes from specifications of project requirements to award of contracts.

6.3 Applicable law to pre-source selection sub-processes

Just as there are laws, regulations, and guidelines, which influence the identification and

design of construction projects, the pre-source selection to award phases of outsourced construction projects (see chapter three, implementation phase) are governed by other rules and organisations (actors). In chapter 5 (section 2) it was observed that GoU promulgated the PPDA Act of 2003,

...in attempt to achieve better value for money in this area of government expenditure and to reduce corruption in government activities, recognising that procedures leading to the award of government contracts and contract management were major areas where corruption took place, ...adding to the cost of development projects...” (Agaba and Shipman, 2009:p393).

This pursuit of value for money seems to have been substituted for by a drive to ensure compliance with regulations without necessarily achieving either of them.

Public sector reforms in Uganda appear to have focused on streamlining procurement generally, but less work done in regulating outsourcing of construction projects in particular. An assumption taken appears to be that reforming public procurement would automatically ensure effective and efficient outsourcing of public construction projects. It seems the goal of achieving value for money through procurement reforms is far from being realised, as a head of a procurement unit in a large ministry and a founder member of CIPS²⁴ Uganda, observed

Our procurement law is just about compliance with guidelines but not value for money. In the UK the OGC²⁵ which is the equivalent of PPDA their operations are about efficiency and value for money. In Uganda, or the World Bank which we seem to follow, we are after compliance with the law...I will not get credit for saving government US\$2 million, if I followed the wrong law. I will be taken to Luzira [government prison], but if you followed the law and government lost US\$10 million, you will never be punished, because the law says you must follow the guidelines. There are some decisions you take and you want to cry. But the law says...

The officer went ahead to diagnose the cause of marginalisation of value for money. “You look at PPDA Act there is a department of compliance, which means that is what they emphasise. There is no allowance for flexibility such as private finance initiatives [pfi] I read about on OGC website”. One could explain overly legalistic approach of the outsourcing system in Uganda because of its history. The purpose was to legislate against corruption by getting the institutions (formal) right. And therefore the regulator focuses on enforcement of paper compliance. “You have to make sure the paper work is O.K. because you know auditors

²⁴ CIPS-is the Chartered Institute of Purchasing and Supplies, UK.

²⁵ OGC –Office of Government Commerce,

or the PPDA are coming,” remarked one respondent. The lesson appears to be that a process can seemingly adhere to the law, through verifiable paper work, and yet be running fully according to informal rules.

The PPDA Act as the main applicable law constitute the policy and regulatory framework within which public procurement in general and outsourcing of construction projects in particular, takes place both for central and for LG levels as was pointed out earlier. The Act in section 5 establishes the PPDA Authority as an autonomous body corporate that centrally regulates public procurement in Uganda. The Act however, allows for waivers and accommodates alternative procurement systems such as those of World Bank and AfDB.

Accordingly, the full operationalisation of the PPDA Act delayed to take effect at the LG level until the promulgation of the 2006 PPDA regulations and guidelines specific to LGs. Prior to that from 1993-2006, LG procurement was carried out under the LGS 1993 amended into LGA 1997 to bring it in line with the constitution of 1995. The issuance of dedicated PPDA regulations and guidelines for the LGs aimed to achieve full harmonisation of regulations for both levels of government in the country.

In section 5.3, it was pointed out that the PPDA Act, its regulations and guidelines spell out a number of actors and their responsibilities emphasising each actor’s independence in relation to their respective functions and powers. In addition, the establishment of the PPDA Authority, the act provides for

- (i) empowerment of Accounting Officers (AO) of procuring and disposing entities with overall responsibility for the successful execution of the procurement, disposal and contract management processes of their entities including appointment of Contracts Committees (CC), establishment of Procurement and Disposal Unit (PDU), and exercise of Administrative Review in case of any complaints by bidders or disputes arising in procurement process
- (ii) appointment of *ad hoc* evaluation committees by CC on recommendation of the PDU,

- (iii) A user department (usually the works or engineering department in case of construction projects) to prepare work plans for outsourcing based on approved budgets and submitted to the PDU for processing, and
- (iv) operational *procedures* and expected behaviours (Code of ethical conduct in business) of actors against which institutions have evolved

Having outlined the legislative and regulatory framework as codified, the question, which becomes pertinent, is what are the institutions, which *actually* influence *pre-source selection to contract award* phases of construction projects? How have they evolved and why?

6.4 Institutions and award of contract phase

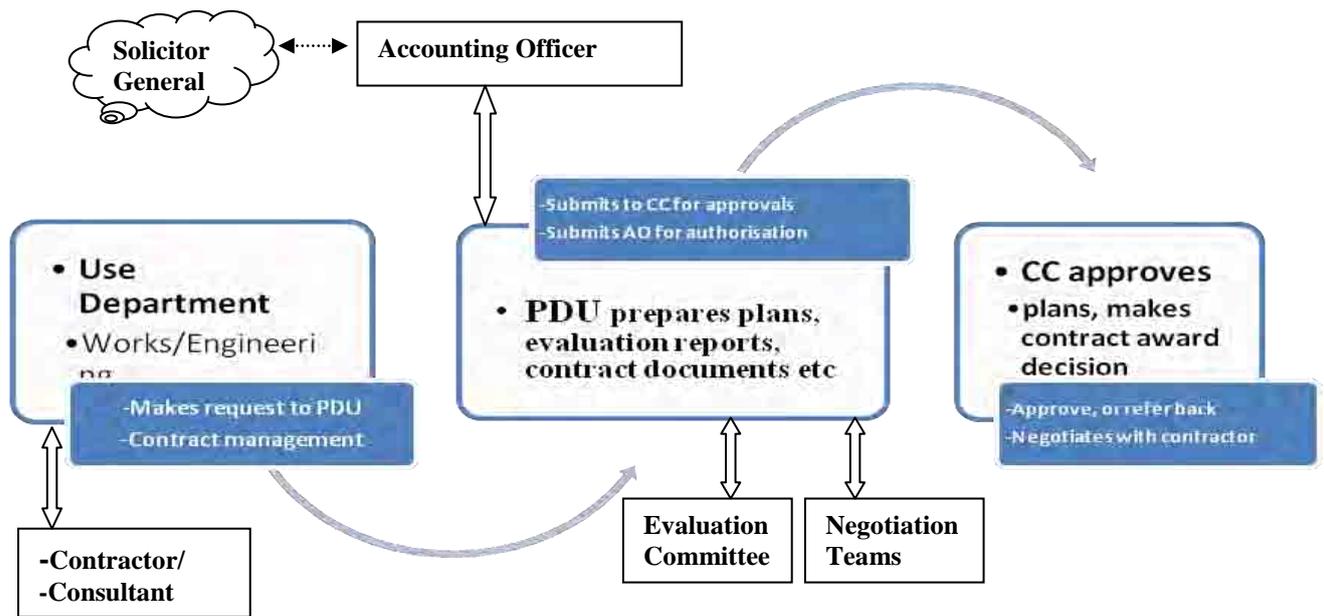
To answer the questions in section 6.3 above, documentary review, interviews, focus group discussion, and observations data was used. The investigation focused on seeking explanation on why actors behaved the way they did and what actually structured their decision-making processes. The rest of this section centres on the CG, followed by LG outsourcing.

Awarding construction contracts at central government level

These study findings reveal an intricate pattern of relationships among units of the Procurement and Disposal Entity (PDE), the PDE and external agencies such as the Solicitor General's Office and the PPDA Authority. Within the PDE, three actors (user department, PDU and CC) play the most significant roles in the solicitation and award of contracts. Figure 6.1 depicts the major relations involved.

The arrows in figure 6.1 represent the flow of requests, recommendations, and approval. The formal procedure for soliciting for and eventually awarding a contract consists of about nine (9) stages: *invitation to be prequalified, pre-qualification, registration, invitation to bid, opening of bids, evaluation of bids, award of contract decision, negotiation, and award of contract*. If a project requires a consultant to draw detailed specifications and/or supervise a contractor, and later a contractor to undertake the works, a repeat of the chain of events (stages) occurs.

Figure 6.1: Key PDE actor relationships and flow of information –central government



Source: PPDA regulations and guidelines

For each of these stages, there are specified actors, procedures to follow, prescribed forms to fill, and appropriate behaviours of actors to observe (code of ethics). For contractors and the client, the key governance instrument becomes the contract that parties sign. Section 62 (1-2) of the PPDA Act, 2003 states; “A procuring and disposing entity shall use the standard documents provided by the Authority ...for drafting all solicitation documents ...which shall apply to any resulting contract...” On this basis of all Ugandan public constructions contracts are standard providing *general* and *special* conditions of the contract. One needs special permission “...to place a contract against the General Conditions of Contract other than those contained in the standard solicitation documents provided by the Authority (PPDA Act Supplement, January 2003). These conditions appear to be an adoption of the FIDIC forms of contract as pointed out in section 3.4. Below, the discussion turns to each of the key actors in the outlined chain of events.

The user department

The user department, usually an engineering unit, initiates the process by submitting a request to the head of the PDU who looks at requests and checks whether the requirement is part of

the approved entity budget and procurement plan. The user department should specify their requirement clearly to communicate to a prospective contractor or consultant exactly what the client wants.

According to neoclassical prescription, full information is assumed and that thorough, distinct, and extensively codified procedures implemented (Low 1993). Due to complexity of some construction works, consultancy services are outsourced to undertake designs and specifications. This increasingly became necessary due to the twin effect of the decentralisation and outsourcing policies that affected government-engineering departments in fundamental ways. Either the consultant, or the contractor or arbitrator now performs many of the traditional functions of government engineering department. The residual functions left to the government engineer are mainly planning through problem identification and objective setting so that the rest is outsourced from private sector. These objectives and the problems to solve is what the user departments are supposed to submit to the PDU so that competitive mechanisms to source appropriate service providers are carried forward. The user department is supposed to participate in the evaluation of bids. This would be after CC has approved the request and the proposed method of outsourcing; and the PDU has solicited and received the bids.

However, in practice adherence to the neoclassic prescriptions is challenging due partly to the difficulty of attaining full information to undertake specifications but also to communicate it effectively. In addition, the level of social embeddedness of activities may limit the extent to which purely competitive procedures are pursued. Often, a parallel practice generally accepted in the ‘spirit of cooperation’ has emerged for certain categories of construction projects. A secretary to a CC of a ministry remarked

.. [I]deally, the users are supposed to ...submit their requests, to the PDU backed by the pp form 20²⁶ which confirms availability of funds, and ideally it should be the PDU to identify and shortlist suppliers [contractors] and seek approval from Contracts Committee. But what is common, is that

²⁶ PP. form 20 issued by PPDA regulations for Accounting Officer to confirm availability of funds.

the users come with their own list of contractors...which is not supposed to be their job. So it makes it difficult for the PDU to go against the request of the user. But ideally what should happen is that the user should just say I want this ...maybe I want to construct a dam, then it is now the PDU who should look at the list of pre-qualified suppliers [contractors], then determine the procurement method, and source the suppliers [contractors], but that's usually not the case.

It is suggestive from the above statement of the respondent that the PDU and indeed any other actors in these transactions cannot easily go against the informal flow of things. A maze of social networks may come into play. Transactions are socially embedded (Granovetter, 1985). One can attribute this to existing social relationships within the bureaucracy of the ministry (Alder & Kwon, 2002). Whereas, the revelation by a secretary of a CC above may indicate observance of the procedures as laid down in the formal rules, the behaviour of the actors is not necessarily as per prescribed formal rules. Nonetheless, they are acceptable for a ministry team because all the parties involved are civil servants from the user department, the PDU, and the CC. In essence, each actor (or group of actors) will attempt to ensure there is no apparent breach of procedural aspects of the formal rules including producing duly signed and appropriate forms while still adhering to the informal requirements. This rhymes with the observation of a senior administrator in the ministry who has had many years as a district CAO that "...Central Government, they are smart. They follow the formal rules and informal rules in equal measure". But what would explain the parallel and high degree of informality among the various actors? One respondent attributed it to a degree of mutuality developed over the years to promote cooperation to make 'each other's work easy'. Formal procedures are followed but sometimes they are not the deciding factor.

In practice, respondents observed that it is rare for small projects to attract escalated complaints that go beyond the PDE to PPDA, IGG or courts of law. Generally, awards of contracts for outsourced construction projects especially those whose estimated value does not exceed Uganda shillings 100,000,000 or US\$ 50,000 go with no complaints. Projects within these estimated values employ Request for Quotation (RFQ) procurement or restricted bidding according to PPDA guideline 1/2003(1c). RFQ or restricted bidding procurement methods require no open advertisement. The PDU must however, seek approval of CC for any

procurement method or short listing of potential service providers, including composition of evaluation committees and negotiation teams.

In the case of restricted bidding, once the PDU has sought and received at least three quotations, then they are sent to Evaluation Committee who produces a report that is presented to the CC for a decision to award. These methods of solicitation are generally susceptible to favouritism in award of a contract once the user department as reported by a respondent above compromises the independence of the PDU. This may be because firms nominated by the user department are amenable to manipulation in a certain way to favour a particular one. Therefore, by the time the quotations are received by the Evaluation Committee and later sent to CC for award decision, it is *fait accompli*. As was argued in the analytical framework in chapter four, the social relations within the bureaucracy of the entity or department generate bridging and linking social capital that facilitates mutual trust.

In the spirit of ‘cooperation’, colleagues and subordinates are obliged to consider each other’s needs otherwise one risks being labelled ‘uncooperative’ or ‘not understanding’ ‘*luge gezi*’ [wiseacre] which is a sully that can lead one’s being isolated, jumped over in promotions or even excluded in lucrative processes such as procurement. One danger of such metaphors is to be put on ‘*katebbe*’ [denied assignments] or being given a ‘dry desk’ [jobs not considered important]. One respondent commented that you need a team of smart people who ‘understand’ and will ensure all the paper work is right but decide based on our interests. A respondent disclosed that even the composition of the various committees, their constitution could be strategic to ensure “the smooth flow of work” by excluding ‘difficult’ people to work with. The behaviour generally observed in government in Uganda, is an adaptive institution (Tsai 2006) that has evolved following decentralisation and introduction of outsourcing instead of in-house sourcing particularly with construction projects where the tradition was in-house sourcing for a long time. Below I illustrate the central role of the PDU in outsourcing process.

The Procurement and Disposal Unit (PDU) as a 'secretariat'

The PDU aims to develop and execute a procurement plan for the PDE in accordance with entity's strategic and operational plan. In accordance to the approved budget, each User Department indicates what will be required and when in the course of a financial year and submits this to the PDU. The PDU consolidates these submissions into a procurement plan in accordance with approved budget of the PDE. The plan helps the PDU to achieve an orderly execution of annual procurement activities that engender financial predictability, accounting and control over procurement budgets.

The head of PDU, who is supposed to be a procurement expert, amalgamates departmental schedules of requirements including their respective method of solicitation and submits to the CC for consideration for eventual approval by the top most authority of an entity such as a board or a council. In the case of a ministry, it is top management and eventually the Parliament through the relevant Sectoral Committee. The researcher did not come across duly approved procurement plans. The approved plans require confirmation of availability of adequate funds for the project by AO who in turn may need confirmation from Secretary to the Treasury. The head of PDU proceeds to invite bidders on assurance that funds are available.

However, Heads of PDU and Secretaries to CC interviewed reported that making a procurement plan for an entity generally and in relation to construction projects in particular, is quite challenging. PPDA reports compliance in this aspect at 56% (PPDA Report 2008). The practice of making comprehensive work plans is not well entrenched in many government departments. Where work plans are developed, they tend to be too general to facilitate development of a proper procurement plan. A proper plan should be able to indicate the following: (a) a detailed breakdown of construction works to be outsourced, (b) a schedule of outsourcing requirements in order of priority, (c) a statement of required resources

supported by a schedule of projected funding and approved by the AO, (d) a plan of the likely sourcing method for each requirement and the likely time frame, and (e) measures to be taken to prevent recourse to the use of direct procurement (PPDA Regulation 2003).

As was pointed out earlier, often for a single project more than one firm (consultant, contractor) is contracted which adds to the challenge of developing a precise work plan. The phases preceding award of actual construction often involve award of other contracts and the whole process to award of the main contractor would then transcend more than one financial year. The Executive Director, PPDA in this connection remarked in an interview with *The New Vision* on 01/04/2009

To build a road, you must plan for it. ...you must first of all do a feasibility study, procure a consultant to do the design and then procure a contractor to do the building. The rules demand you must advertise, giving bidders at least 30 working days within which to respond. If you are to undertake a project in road construction, by July you should be ready to tender that project, meaning that the feasibility studies and designs have been done the previous financial year.

With this type of complexity, determining costs and timing in advance is limited (bounded) by capacity issues as CG level departments undertake large and complex projects. In addition, for a department to be able to produce such information it assumes that there is a highly committed workforce and cash flow (project finance) is predictable.

In the study, respondents pointed to two reasons as responsible for poor procurement planning for construction projects. One is the level of commitment of staff concerned and two the financing problem. Government funding is often erratic and even when donors are funding these projects, some administrative bottlenecks both in the donor office and Ugandan Ministry of Finance make cash flow projections difficult to follow. Basheka (2009) confirms this view and Thai (2004) who attribute poor planning to the level of seriousness attached to it. They "...have not taken planning as a serious activity and lack understanding of the value of procurement planning" (Basheka, 2009:p8). Whereas these capacity issues are important, there are other influencing factors. Respondents revealed that submissions to the PDU by user departments could be opportunistic whereby one strategically develops work plans with an

intention to keep control over the process. This may manifest in delayed submissions to the PDU to create reason for emergency sourcing that would warrant waiving some procedures. What all this means is that the PDU occupies a delicate and central role as dramatised by a respondent

The PDU is more or less like the secretariat. The contracts committee, assuming procurement was an independent corporation, are the board of directors. So the users [user department] submit their requests to the PDU, then the PDU are the technical people [in procurement], they look at the PPDA regulations for compliance. The accounting officer is like a trustee, confirms there is the requisite money to sign the contract with the contractor. Emphasis added.

The PDU is required to act as a secretariat but with limited administrative powers. As a unit, the head of PDU is lower in hierarchy than a head of department whose outsourcing requirements the PDU coordinates. This sets a rather subordinate–superior relationship between a user department and the PDU and limits the extent to which the unit can prevail over departments to enforce procedures unless the head of the PDU resorts to complaining to the AO. Such an escalation of matters to AO is likely to be construed as accusation that does not auger well for smooth working relationships. This may also explain why the quality of procurement plans of the PDEs visited was reported to be poor. The quality of procurement plans affect coordination of the PDU with the CC.

Contracts Committee with no contracts

Review of official documents revealed that authority to award a contract and its signing on behalf of the PDE (client) rests with the AO. However, procedurally, AO can only award a contract on receipt of an *award of contract decision* by the CC. In other words, “an award of contract decision by the contracts committee” according to PPDA regulations does “not amount to a contract binding a procuring and disposing entity to a provider”. The CC only recommends for award to a bidder with the lowest evaluated bid price, which is qualified, responsive, and technically compliant. Paradoxically, the same CC can only make *a decision to award a contract* based on a report by an evaluation committee submitted through the PDU. The contracts committee appoints evaluation committees on recommendation by PDU.

Evidence gathered from respondents confirms that CCs are well established in the CG procurement system. It is “unthinkable” that an AO can award any contract without involving the CC. This aspect of the law is widely enforced perhaps because its benchmarks are very clear and the cost of functioning without one can cause AO a dismissal. One of the benchmarks of existence of a functional CC is periodic submission of its minutes to the regulator (PPDA) and its existence must be notified to the Secretary to the Treasury who actually must approve the nominees to CC by the AO. Minutes of the CCs are also a subject of the Auditor General and periodic compliance checks by the regulator. These multi-regulatory organs have ensured institutionalisation of CC. However, its independence is generally vulnerable to the authority and power of the AO and the manipulation of the PDU. Members of CC interviewed observed “...although we make the award decisions, and approve nominations to evaluation committee, everything is set before it reaches us. That is why it is possible for the user department to determine a firm of their choice to win a contract in spite of all the checks and controls in the law and practice.

Other important actors and procedures that matter

The PDEs are required to provide public information as part of the transparency drive at each stage of the contracting process. For example, bid opening is advertised and done in the open. Upon taking a decision to award a contract by CC, PDEs are required to display the results on designated notice boards indicating the best evaluated bid. PDEs are also required to notify the unsuccessful bidders. These procedures are meant to allow any aggrieved party to lodge complains either to AO, the regulator or even to the Inspector General of Government (IGG).

As already pointed out above, projects with values equal to or below US\$ 50,000 rarely attract escalated complaints. The answer for this phenomenon seems to lie with the type of firms, which bid for such projects. Interviewees when asked to describe the kind of firms they were engaged with revealed that all were companies with limited liability, some local

Ugandan firms while others were international and indeed a few multi-national corporations (MNC). Alternative descriptions by respondents included type of ownership of the firms, whether owned by indigenous Ugandans or Ugandans of foreign origin such as Asian Ugandans, or foreign owned firms. The study was able to establish that for all government agencies there is general preference to deal with state registered and licensed firms mostly those limited by shares. This could be verified in their solicitation documents examined. A firm's registration certificate is a standard requirement for works solicited through competitive bidding. Collaboration of interviews and document review revealed three categories of firms based on type of ownership: Firms owned by indigenous Ugandans, firms owned by non-Ugandans, and mixed ownership firms.

Construction firms owned by indigenous Ugandans (known as local firms) are generally smaller than the rest of the other categories of firms when one considers financial²⁷ and works²⁸ capabilities. Because of limited capability, they bid for less complex and relatively small projects. This category of projects coincides with the less than US \$ 50,000 type of projects. In other words, bureaucrats in government are generally dealing with their fellow Ugandans when it comes to small projects, which allow them to fall back to informal dealings with ease. This view is supported by the World Bank (2008), OECD (2008) and BMI (2010) observations that there is a high tendency for informality in Uganda. An enterprise exploratory survey by World Bank (ibid) reports that about 50% of firms believed that one needed to part with a gift or a bribe to get a contract or get things done. Interestingly, this is not seen as a barrier according to the survey because only 23% believed it was a major constraint to doing business.

²⁷ **Financial capability** is evaluated in terms of the largest construction contract the contractor has performed in the past 5 years and value of its construction facilities and equipment

²⁸ **Works capability** is evaluated in terms of number of qualified professionals in their employment on full-time employees

These findings tend to confirm that where social capital exists or can be facilitated to grow, informal practices are possible. That is why in the case of firms owned by Ugandans; the tendency is to go informal in dealing with the bureaucracy starting with talking in unofficial language. Often people have been to same school or University and they know either their relatives or some other social tie, which a prospective contractor will tend to exploit. One engineer from a contractor firm in the private sector explained

Just to explain it; for example, let us say XY has put in an advert and a certain organization for example XXY where I do not know anyone. I see those two advertisements. So, what I will do, I will go to XXY as I am trying to purchase the documents I try to see if I know anyone there. First, you may wish to know are you sure there is money for this project you want to get some detailed information about it, you do what we call ground work. Some of them may be willing to tell you whether the money is available; you put in your quote. Like in XY since they already know me, I just put in but usually when you do not know anyone it is usually scaring. But, you know what happens is that for us who have done engineering also those people in those organizations we studied with them. ...But, usually a consultant you may have worked with him somewhere you say yes, I am putting in this bid just give him a call it is finished. Probably if they are not so many bidders he knows only you, you never know he may not just look at it carelessly that is all.

Networks matter and most contractors will try to exploit them, but being Ugandan gives advantage in those circumstances because the networks may be denser as Maclean (2008) discovered in his study of the privatisation in France, 1986-1998. The bureaucratic and elite in France with seemingly dramatic changes in the rules of the game had very little impact on the structure and objectives of the game itself (ibid: p808). However, if a consultant, as is common with large and complex projects, is handling the outsourcing process, new social dynamics come into play.

Foreign or mixed ownership firms are generally larger both in terms of the complexity of works they have undertaken in the past and the financial values of those contracts when compared to local firms although a few local firms also compete in this category of large projects. They tend to go for large projects (categorised in chapter three), some of them worth millions of US dollars. Such large and complex projects typically involve donors in terms of funding and often hire international experts to backstop their Ugandan counterparts in project

preparation. Respondents observed that often, international consulting firms are contracted in undertaking specifications for the purpose of soliciting bidders.

Document reviews and focus group discussions indicated that foreign firms dominate projects of high estimated values. The chair of Uganda National Association of Building and Civil Engineering Contractors (UNABCEC) reported that “Only two foreign companies are doing 60% of available construction jobs” and complains “A country, which has no local construction industry, is not going to grow,” (*The New Vision* 23 July 2008). Whereas the percentage share of foreign firms in the construction industry in Uganda as voiced by UNABCEC chair may not be very accurate, it is, however, indicative of their dominance in the outsourced construction projects at the CG level as also echoed by BMI (2010). Part of the explanation for a large market share by foreign owned firms in big contracts is because of “hard-to-get bank guarantees which are out of reach by local firms” (ANABCEC Chairman). He further attributes the exclusion from big projects to the government classification system of contractors that is not sensitive to the needs of indigenous firms. Government classification system can influence eligibility of a contractor to bid for certain sizes or types of construction projects especially in the road sector.

Whereas, there may be truth in the explanation of dominance in big projects adduced by ANABCEC, literature points in a different direction. Ndekugri, *et al.*, (2007:p792) citing Bowcock (1997:p.50) observed that some employers from developing countries “...doubt[s] as to the ability of the engineer [international consultant] to act impartially, as both the engineer and the contractor are usually from the developed world and may have developed relationships working together on previous projects.” There were feelings expressed by respondents that advisors leak information to consulting firms from their regions of origin and in turn consulting firms once they have worn pass vital information to prospective contractors. However, whereas one could see a remote possibility of giving advantage to a prospective

contractor in that manner, the logic of a consultant taking advantage of such information seem limited especially when emphasis in evaluation of bidders for such projects is usually a 'quality based selection methodology' although one cannot rule out completely such advantage bestowed by the connection. Perhaps, donors' demand for 'no objection' to progress from one stage to another while curtailing informal dealings of indigenous Ugandans may be inadvertently aiding international construction firms.

Generally, the belief among some government engineers is that the expatriate class of actors involved in the construction industry display limited trust in the efficacy and probity of systems operated by indigenous Ugandans to which a number of Ugandan engineers alluded;

When we have expatriate engineers and contractors it involves new rules - because you see they are coming from a different background. They have their technical people – of course...people who are international. So they may be having the international framework of doing things, and some of these people really, for instance, donors may always be comfortable when their jobs are done by financially equipped contractors. For us we are thinking of the *bona bagawale*²⁹, we want people to just get projects ...I think they [donors] are justified by the way, because local contractors may not realise that amount of money to really do the work, so you find of course, the way a big project runs is not the way a small project runs.

The observation by an engineer as reported above point to plurality of market arena for construction projects.

Many markets, one industry

When one considers institutions actually influencing solicitation and award of projects at the central government level, two institutional regimes appear to operate. A regime with regard to large and complex projects where a mix of local and international actors work together; and relatively smaller projects where the arena is dominated by local actors both in the public sector and private contractors as well as consultants.

Findings suggest that most medium to large projects have direct donor involvement as financiers and small projects rarely have direct donor involvement even when donor money is used. This might be, in general due to relatively smaller size but numerous projects

²⁹ Government poverty alleviation policy code named 'prosperity for all'.

undertaken at the LG levels as the existing donor dispensation precludes their direct involvement. CG in general undertakes medium to large sized projects. Therefore, there is a tendency to find that where donors are involved large firms are the contractors. This professional combination tends to suppress the tendency of the Ugandan bureaucracy to exercise informality. First, as already pointed out earlier, donors demand to give a ‘no objection’ at every stage of the process of outsourcing. If they are not satisfied they can halt the process, in other words channels of appeal and therefore intervention go beyond domestic control. This step presents a lever for contractors and donors to incline the process to their preferred institutional regime.

Secondly, large firms generally demand adherence to the law, regulations, and guidelines and will not hesitate to raise written complaints to the AO or PPDA Authority and/or the donor at the earliest detection of a breach. “Supervising large firms is hard work. They keep you on your toes. But it is good”; was a remark of an engineer from the Road Agency. This knowledge seems to keep the Ugandan bureaucracy on high alert to observe the formal procedures. This may be contrary to what happens when smaller firms run by indigenous Ugandans are involved. They tend to be informal in their communication, preferring to meet face to face or make a telephone call where they should have written. Table 6.1 shows typology of funding and level of informality in outsourced construction projects in Uganda.

Table 6.1: Type of funding and formal rules actually applied

Donor involvement Firm size	Small firms	Large firms
Funding with donor influence	Formal	Very formal
Funding with no donor influence	Least formal	Fairly formal

Source: Compiled from interviews and document analysis

The table depicts that in projects where direct donor involvement is limited, the tendency is less formality exercised and firms contracted are generally smaller. Indigenous Ugandans

mainly own such small firms and share characteristics with sole proprietorship firms since they employ very few permanent staff mostly using family and temporary labour. In many instances such firms are referred to by the name of the majority share holder or founder, generally preferring to call a firm by its key personality's name rather than by its registered name. Large projects with a high donor influence are the most formalised.

Similarly, projects with complex design requirements, which often attract use of consultants, also tend to be large. Small firms rarely qualify for these large and complex projects as they often lack financial and works capability. The degree of formality varies as shown in table 6.2.

Table 6.2 Formality and level of complexity of project

Degree of formality Project complexity	Low Complexity	High Complexity
High Formality	Formal	Very formal
Low Formality	Least formal	Fairly formal

Source: Compiled from interviews and document analysis

The figure gives a sketch of how complexity affects the degree of formality in the performance of operations in the outsourcing process of construction projects. A director in one of the government ministries remarked

... with large projects which carry a high risk of failure, we are very careful whom we award a contract. How can you give a storied building like this [we were in high-rise building] to an amateur company? It would collapse on you and then your job will be on the line if you survive death.

Decision makers can prefer formal or informal institutions depending on the gravity of possible negative consequences that may result from their participation in a decision process. They weigh possible personal costs and are careful as to which firm is contracted by being strict with the formal evaluation criteria. The same principle in selecting contractors is used in selecting consultants. Consultants like contractor construction firms can also assume similar categories as in table 6.2. There are those owned and run by indigenous Ugandans, a category of expatriate or international firms, or mixed ownership. It is noteworthy that in the consulting

area, indigenous Ugandans have acquired considerable capacity because unlike construction, which requires heavy and expensive equipments, (high physical asset specificity); in consultancy the main commodity is knowledge through training and experience. In spite of this capacity, very big projects involving bilateral or multilateral donors have tended to favour international consulting firms. Indigenous Ugandans do not necessarily own these international firms. It appears that through a combination of a common practice of employing expatriate advisors during project preparation and seeking ‘no objection’ from the headquarters of funding agencies, international consulting disproportionately benefit from these practices to dominate large and complex projects. It is also not surprising that foreign construction firms end up taking a lion’s share of the big projects segment of the market as was pointed out above.

The foregoing explanation notwithstanding, it is difficult to tell which firm is foreign or Ugandan. A member of the Association of Professional Engineers made this observation and noted; “The classification of contractors and consultants under the current registration system in government departments lacks a legal basis. The scheme does not also differentiate between foreign and local firms to avoid unfair competition” (*The New Vision* 23 July 2008). Indeed, in the study it was difficult to classify some firms based on being local and foreign. When a senior official of one of the large firms, which we had assumed to be a foreign firm, was asked what they considered their firm to be, the official said it was a Ugandan firm. Actually, on searching their web site, it was Ugandan registered firm of 1960s although all the directors are not Ugandan nationals. So a more useful classification would probably be based on financial and works capability. However, in terms of trying to understand social networks, it is more interesting to unveil details of ownership. This aspect was not central to the scope of the study and time constraint would not allow for this to be done exhaustively.

Awarding construction projects at local government level

Study findings indicate that the institutional framework at the LG level differs from that of

CG level although they are linked as was illustrated in chapter 2. Besides all of them being subject to the PPDA Act, its regulations and guidelines (procedures), the LGs in general have a different institutional setting characterised by the following features: a different set of actors, a different evolutionary path (history), and a different pattern of regularised behaviours of key actors. In addition, LG are closest to the points of delivery of the public services including outsourced construction projects. The structure of CG superimposed on LG, the procedures actually adopted by CG, including the behaviour of key influential actors in the CG, generates *intergovernmental* issues at the LG level. Also among LGs themselves, there are differences, and a major one relates to rural-urban governance arrangements giving rise to municipal or city urban governments and rural district governments. Both entities (City/Municipality and District) as already noted elsewhere, have contractual capability in outsourcing of construction projects.

In the next sub-section, the same question raised to interrogate institutions influencing contract award at the CG level is repeated; what are the institutions *actually* influencing pre-source selection of outsourced construction projects at the LG level?

Local governments have less project planning work

The most common construction projects undertaken at LG levels are mainly building of schools or classrooms, health centres, water and sanitation facilities, feeder road works, market stalls and LG administration buildings. Each of these construction projects has a corresponding CG ministry that provides an oversight function.

Findings indicate that most of the funding especially since 1997 has been by donors aimed at poverty alleviation and therefore construction took on a character of ‘mass production’ in order to produce facilities to enhance social services delivery in education, health, road infrastructure, water and sanitation. In order to facilitate speedy implementation and to forestall effects of lack of planning capacity, respective CG departments offering oversight

services attempted to standardise some operations of the respective construction programmes. A senior CG administrator who served as district CAO for over ten years from the inception of decentralisation in 1993 remarked that LGs have limited strategic choices to make as they are expected to follow guidelines developed and handed to them by line ministries of CG. The guidelines by the central government ministries cover both the criteria for project selections in order to prioritise which schools, health centres and roads; as well as standard designs and cost estimates for a classroom, health centre and others. However, from the interviews with LG officials, findings suggest that non-compliance with the formal guidelines is due to both practical reasons and institutional issues.

The practical reasons are to do with standard designs and cost estimates. As already pointed out single standard design of a facility that assumes uniform site conditions are perilous. Indeed district engineers were able to argue the case for changes and accordingly costs were also affected. Whereas the guidelines remain as originally formulated, the wide spread practice is for each outsourcing entity (PDE) to come up with their own cost estimates which they then submit to the respective ministry for ratification. There were wide spread complaints for arbitrary cost adjustments (cuts) on submitted estimates.

So the ministry brought those designs we have them...the designs have costs. Only that the way they were costed, we changed them. For them they were even looking at the approach of communities contributing materials and then you go and build. For us we said no. That was like force account [not outsourcing]...You know like these programmes when they are introduced, they have to be tested on the ground, so in the subsequent years, they will even – the ministry will realise that the rates may be in district ‘A’ may not apply in district ‘B’, because there are difficult areas. So, finally they accepted that every district must come up with their own cost. [District Engineer]

The procedure of LGs submitting engineer’s confidential cost estimates to CG ministries tended to dampen the required process of ‘getting the prices right’ which the neoclassic objective for outsourcing process in the first place. These hierarchically fixed prices have ended up being the average bid prices by all contractors at LG because as business people they can find them out either at the ministry headquarters or at the district. “We do business intelligence and get the reserve prices on BOQ. Whether it means tracing it in the ministry or

with the consultant or at the district we get those prices,” remarked LG contractor. By the time, of submission of bids most contractors have almost the same quotations, leaving technical aspects as the only basis for decision to award. This is a form of *market failure* where prices are in effect fixed administratively instead of by the market contrary to the philosophy behind outsourcing and indeed the core principles of public procurement in Uganda (PPDA Regulations).

Cost control in this manner can easily compromise quality as will be discussed later in this section. It is noteworthy here that this ‘price-fixing like’ policy is restricted only to LG construction projects. At the CG level, prices appear to be determined through competitive bidding and are generally higher on average and construction outputs believed to be of better quality. A number of LG-based respondents complained that when CG is constructing a school in the district its cost can be twice or more for the same volume of construction work.

...they suppress us – our costing are a bit low, compared to theirs. If the ministry, directly implements some programmes – like the presidential pledge or seed schools...it is like ours is half theirs and that one introduces double standards in the work, in the implementation of projects, which we have tried to fight but they insist.

When CG engineers commented about the discrepancy, they attributed the differences in costs between central and local governments to consultancy factor. CG hires consultants to supervise their projects and their costs (fees) tend to raise the total cost of the project. This answer may not adequately explain this phenomenon. Further investigation would be necessary as this fell outside the scope of the study.

Besides the practical reasons outlined above to explain deviation from formal rules, there are also institutional causes. These relate to the structure of the LGs, the characteristics of actors, and the general expectations of communities.

Actors in outsourcing of construction projects at the LG level transact in a setting of a jurisdiction with ‘fused powers’ and embedded in the social structure. The legislative and the executive arms of the LGs, including their civil servants, are usually in one building. The

separation of powers among the arms of the state emphasised by the Constitution at the CG, tends to be lacking at the LG level. The Commissioner of Local Council in this regard observed, “At central government level you have the executive, the legislature, the judiciary, spatially separated...You can actually know that the executive sits there, that legislature is this one, but in the local government, there are fused powers.” The working space at the LG is set to enhance this aspect. The Commissioner further remarked

...the chairperson sits there, and the CAO sits there, Speaker sits there, deputy CAO sits there, the other members of the executive sit there, and the heads of departments sit there. When it is lunchtime, they end up in a restaurant together. When somebody dies, they are all on the same funeral. Maybe the same church, same wedding function. That intensity of interaction, and then MPs, accessing a PS, it is very rare. It is only when they come to account and in the sectoral committees.

The common physical space and accompanying density of interaction adds to the creation of social capital especially the dimension of trust. The fusion of powers is according to the LGA 1997 in section 10 (1), which states “A Council shall be the highest political authority within the area of jurisdiction of a LG and have legislative and executive powers to be exercised in accordance with the constitution and this Act.” In addition, the Executive arm of Council has some judicial powers derived from section 18 (e) which states, “The Executive Committee shall receive and solve problems or disputes forwarded to it...” Further, the Chairperson who is the head of the executive is empowered by the LGA to “oversee the performance of persons employed by the Government to provide services ...and to monitor the provision of Government services or implementation of projects...” With wide sweeping powers of the political class of the LG, the scene is set for them to impose their will on the functioning of the LG, which also includes outsourcing of construction projects.

However, the extent and effectiveness to which councillors or indeed all other actors can use their powers and other endowments is constrained. The constraints range from personal abilities, the structure they have to function within, the procedures for decision-making, and their perceived gains and losses from their actions. Below the discussion considers key actor

roles in award of contracts at local government. This is probably the most important leverage point where most interests seem to converge seeking to impose their will.

The user department of local government –autonomy and constraints

The functions of the user department at the LG level in the processes leading to contract award are the same as that at the CG. They are (1) to submit their requests to the PDU for processing and forwarding to the contracts committee, (2) to participate in bid evaluation after solicitation and receipt of bids, and they administer contracts once commissioned. Which type of institutions *actually* matter in their work?

Whereas construction projects are shared by many government ministries or agencies such as education, health, water, roads, energy, police, prisons and others, at the LG everything construction and engineering is undertaken by the works department or the department headed by the district or municipal engineer. This concentration of works is however, not matched with capacity at that level of government because for many LG authorities it is difficult to attract and retain a professional engineer. A member of the executive committee of professional engineers (UIPE) estimated that only one of all engineers employed by LGs is a registered engineer. “Being a professional engineer you grow into it and by that time professional engineers are not willing to work in local government,” was the remark of a serving CAO. A senior administrator in a ministry decried

... we just get these fresh from Universities. You can't get a serious engineer in a district. What is he doing there? A professional engineer in a district! Doing what? Quantity surveyors! You can't find them in a district (Under Secretary, but a former District CAO).

This disparaging view of LG employment is partly attributed to the bullying nature (or excessive use of moral suasion) of many district and urban councils as employers and the attendant job insecurity, which prompted CG to recentralise the positions of CAOs, Town Clerks and their deputies in the LGA amendments of 2006. These amendments aimed at trying to improve accountability at the LG levels as these AOs were being threatened with dismissal all the time in order for councillors to extort contracts and other inappropriate

benefits. These conditions still hang over the jobs of the rest of the LG staff including the chief engineers of the LGs. One of them remarked, “The CAO expects me to stand up against these councillors when my job is in their hands. His [CAO] is protected by the central government.” This may therefore imply that whereas in formal terms actors may have a degree of autonomy, actual freedom of action is subject to subtle structured constraints as was pointed out in chapter two.

Due to the structural setting of the user department of outsourced construction services, often the guidelines and criteria supposed to be applied in appraisal, selection, and submission for procurement are susceptible to the dictates of others (influence peddling) than professional judgement. Sometimes the engineer or even the CC is asked to prepare bid documents for prospective contractors when actually they will be participating in their evaluation. The chairperson of the executive [District or Municipality] could call the engineer and Tender Board (now contracts committee) to his office and dictates “...these two schools to this firm, these pit latrines go to this one, those desks give to so and so. You Tender Board go and write minutes”, a former CAO serving in central government department remarked.

With instructions such as those ones, the engineer and other organs responsible for processing outsourcing at the LG level will work with those instructions in mind.

Of course, we have to be responsive especially to the political leadership, because we are serving the interests of Council definitely, and the council has to be very sensitive to the wider community, what they think about us and it is good because you have to build a relationship between the district setup and the outside world. Yes, because you cannot work in isolation definitely as a local government. It is teamwork (A Secretary to a CC).

The statement resonates with the plurality of rationality advanced by Vatn (2007) as was discussed in chapter two. The principle of independence of action by PDE organs according to the PPDA act is generally challenged by the structure of the LG. The cost of failing to carry through those informal instructions can be dire and immediate. They include public criticisms of the department or particular staff, shunning social occasions of those concerned, threats of dismissal and such other bullying or moral suasions. Sometimes those threats can actually be

executed. A CAO pointed out “If you are a civil servant you make a lot of mistakes. So, they catch you on one mistake and get rid of you, when the key issue is because you did not honour someone’s informal instruction”.

However, findings indicate that the relationships between political leaders and technical or civil servants are not always adversarial. The draconian methods are reserved for enforcement of informal claims when informal relationships have broken down, but typically, they are cordial and mutually beneficial. Respondents from among LG civil servants remarked, “...our political chiefs [Executive Committee] are always with us in the same offices since some of their jobs are full time, we are with them in restaurants, in bars, in churches which are few in these areas of ours.”

In other words, the density of interaction is high both in office and outside office. The high frequency of face-to-face interactions of district officials creates opportunities for accumulation of social capital. But probably more significant is, in addition to the space for frequent interactions at the district headquarters and elsewhere, in most cases politicians and civil servants often have pre-existing strong social ties of family, clanship, ethnic, and religious that yield bonding social capital. The mutual trust among these members of dense networks with strong ties helps to ease the burden of behavioural uncertainty (Richter 2008). “*Tukuwadde akalimo totuswaza*” [We have given you a job do it well for the sake of our reputation]. Here the public officials who on informal basis awarded a contract are using informal pressure although it is official [formal] business. In addition, as was pointed out in chapter two such bonding social capital can also work in such away to exclude outsiders as was found out in many LGs as discussed later in this section. But how do organs of the local government as PDE interact?

PDU and contracts committee fused

Unlike at the CG level where PDU and CC are formally structured to be independent, at the

LG level there is another form of fusion. The head of the PDU is also the secretary of the CC at LG level. This is according to a provision in PDDA LG regulation 2006 section 24 which states that the head of PDU "...shall be the secretary of the contracts committee." This is contrary to the arrangement at the CG level pointed out above where the CC has its own dedicated secretary. In fact, the PPDA regulations section 46 (2) is categorical concerning the relationship between the PDU and CC and states "A member of a procurement and disposal unit shall not be appointed a member of a contracts committee" and a member of the PDU is only required to attend to answer questions (*ex officio*) that may arise during CC proceedings.

The structural fusion between PDU and CC has procedural implications. The ability of the organs of the PDE to act independently appears compromised by the structural fusion. Indeed the head of the PDU has two centres of supervision, one from the AO who supervises the PDU and the chairperson of the CC to which the head PDU is secretary. At the time of this study, a transition from Tender boards (TBs) to CC was taking place. In the next paragraphs, I turn to the CC and their predecessor the TBs which reflect that changes in the formal procedures appear to have no effect on the pre-existing practices.

Contracts or allocation committees?

CCs at the LGs are a recent introduction following passage of an amendment by parliament of the LGA in 2006. Accordingly, the Minister responsible for LGs by section 175 of the LGA issued a statutory instrument covering LG PPDA regulations 2006 that replaced the District TBs. There were two substantial changes in the replacement of TBs to CCs: (1) the procedure and eligibility of nomination of members, and (2) appointments to the committee. The TBs, which operated from 1993 up to 2005, would come into office through nomination by the executive committees (political organ) and appointment by the council (political organs). Membership to tender boards explicitly excluded public servants or persons holding political offices in either government or political parties. By these procedures, award of contracts was politicised and divorced from full control of the AO. Therefore, amendment and regulations

aimed to bring outsourcing of construction project and indeed the procurement function in general under the control of the AO.

Interviews with respondents yielded limited insights on the *actual* functioning of this new arrangement at the LG level. A long serving contractor who at the same time is a speaker of the district council remarked

Hmmm! there is no difference between the operations of DTB and contracts committee. May be contracts committee favour politicians less because their appointments to contracts committee are not directly from us. But, tender boards were always on *bunkenke* [on their toes] since they were appointed by politicians and would be most vulnerable when seeking renewal of their term of office. They were expected to help the chairman to be re-elected when campaigns came up.

Other respondents also agreed with the comments of the contractor cum-politician and added that in Uganda every time you change a procedure you only affect actors but the substance of what was happening remains the same. The respondent added that in these recent changes “...may be the technical evaluation committee has gained a lot of power because now contracts committee has to depend on its recommendations.” Previously DTB was not bound by evaluation committee recommendation and indeed many rarely sought technical advice from a specialised committee. In other words, the new change is “you have now to ‘see’ many committees to make sure your bid wins”. The essence of these comments is that without changing the balance between transaction costs and benefits in a substantial way through enforcement mechanisms, no change in practice can take place. Literature refers to this as path dependencies where by established traditions (tend to continue to determine the outcomes, as cause-effect chain remains stable due to positive returns (Pierson 2000).

From the findings so far, the replacement of the TB (political appointees), with CCs, constituted by civil servants, appear to continue the tradition of allocation of contracts. The CCs have already been accused of taking decisions not purely on competitive basis; but also on social considerations. In other cases, there are allegations of decisions taken based on considerations for personal gain or bribery (Vatn, 2007). The thesis did not focus on bribery but only as far as it relates to informal institutions. It remains very difficult for a firm owned

by people from outside the district to win a contract in many LGs. They treat that as some kind of ‘cheating’ if owners of such a firm should benefit from their district share of national resources. People generally view award of contracts and LG jobs as a continuing process of distribution of national resources. The general view in many LGs is that, it is unfair for someone ostensibly catered for in his or her respective district to attempt to benefit from another district. This also has an effect in terms of constructing district income structures since someone who is local and wealthy participates in local oligopoly that is difficult to break into by outsiders. In addition, because of chronic instability of financial flows reported by local council officials, they prefer firms owned by people who hail within their jurisdiction because they can ‘tolerate’ breaches of the contract as they can be *compensated* in many other ways not accessible to by outsiders. Social benefits include good will, support in future even for things outside district business. The transaction costs are higher for contractors from outside compared to firms domiciled in the district especially trying to chase their payments.

I think they are very accommodative...most of our contractors as I already indicated are local. So these are our local firms, you can look at XX, this is just in ...town council, so these are our people. They have the feeling of their district. This is their district. It is not like somebody coming from say YY, or YZ...to come and do some works here, because that one would not be having the district at heart. But even when we invite them for things like running markets where we want them to raise revenue they don't come; I do not know why? (Secretary to a District CC).

‘Outsiders’ find transaction costs high because supporting institutions and social capital implications are low. To get payment from a district LG for example, may require several visits to the district treasury, numerous telephone calls, and other measures all of which work against an actor based outside the district social networks. However, contractors from within the district also seem to believe they are favoured. Contractors interviewed observed that the evaluation committee on whose evaluation reports CCs depend for decisions to award contracts do not use objective criteria. One contractor gave a scenario where his firm bided for a number of similar construction projects. The same papers scored different marks on same criteria, making him conclude that scores are manipulated to suit preconceived decisions, as he relates

...if you do not have someone speaking for you, it is impossible to win a contract. Even if you won you would have hard time doing the job because the engineer can make it difficult for you even to finish the job or get paid for work you have performed.

This observation corroborates with earlier observation that among contractors; the general belief is that without some connection, winning a contract is impossible. If one lacks a direct social connection, he or she still requires an insider to do the introduction. Many contractor respondents believe that one needs to gain informal relationships with significant persons in the public sector outsourcing system to increase chances of doing successful business. One respondent counselled;

...But you are not alone... These are about 100 firms competing for one job. You think all those people are stupid; they do not have those things? Is there anybody who does not know that you need a trading licence? Is there anybody who does not know that you need qualified engineers? ...But somehow, you get eliminated in one way or the other...Of course you must know these people. If you do not know them, you cannot win..., there must be good relationships between you and these people...I told you, you are not the only person competing. It is the district engineer and his evaluation team that will know the best candidate, I do not know how many marks you got at your 'A' level, at University, but somehow there is always the best, either because he is known or because he is too good. You can never know but in our assumption, we who are in the background we feel that something must have been done for somebody to –

The underlying tone is that the formal procedures and guidelines are important but are rarely the deciding factors. Another contractor with inside information in the workings of a LG observed that political allocation rather than technical decision criteria is used to award contracts. He explained that he had ever attended a meeting where the District Chairman, together with the Resident District Representative (RDC) who represents the President in the District, and CAO advising the chairman of the CC to make sure contracts are awarded in a balanced manner among the various ethnic groups and other interests fairly.

Nevertheless, there are some complex engineering projects such as borehole drilling which require specialised and expensive equipment and skills (asset specificity) that by itself excludes the would be preferred firms. With such projects, firms owned by people from outside the district have a higher chance to win. This is because of the nature of firms that operate at the LG level have a low asset base.

According to PPDA Authority (2009), the LG formal evaluation methodology and criteria for selection and award of construction contracts has three sequential stages. The first, a

preliminary examination to determine the eligibility of bidders and the administrative compliance of bids received; the second, a detailed evaluation to determine the commercial and technical responsiveness of the eligible and compliant bids; and the third, financial comparisons to compare costs of the eligible, compliant, responsive bids received and determine the best evaluated bid. The methodology and criteria ought to be applied within the overarching objectives of fairness, competitiveness, transparency, non-discriminatory and value for money. Failure of a bid at any stage of the evaluation is not supposed be consideration at the next stage of the evaluation process. In practice, according to the findings, stage one is normally complied with. In most cases requirements are complied with at the stage of prequalification before any specific construction contract is solicited although at the time of bidding for specific projects evidence must still be adduced. It is in the last two stages *actual* criteria deviates from the formal prescription as summarised in table 6.3 below.

Table 6.3 Actual criteria used against formal criteria prescribed in award contracts at LG level

No.	Criterion		Comments on why criteria adopted
	Informal	Deviates from Formal	
1	Owner of firm resident in the jurisdiction	Fair, competitive, and non-discriminatory	Most widely used and is priority number one. The main reason money should remain in the district
2	Proxy owner is a senior politician (Councillor or member of statutory body)	LG Councillors are prohibited from trading with their own government	For politician to earn extra income, recoup campaign expenditure
3	Proxy owner is a district staff	Employees of a LG council, prohibited from being contractors	For staff to earn extra income, to cooperate
4	Contractor is introduced by a well connected person	If it amounts to influence peddling it is prohibited	To pay back to supporters, help relatives, for future gains
5	Brings social harmony	Targeted procurement not yet part of PPDA regulations	To balance interest groups of ethnicity, regionalism, silence opponents etc
6.	Helps a disadvantaged person	Targeted procurement not yet part of PPDA regulations	Support families of fallen colleagues, or for women/youth groups, people with disabilities etc
7.	Too complex to be done by local person/firm	Requires open or restricted solicitation if above threshold of US\$ 40,000	Requires capacity far beyond local capability and through open competition award a contract

Source: Summary from findings

Firms dominating construction business at the LG level are supply driven. They are incorporated specifically to tap some government line of funding such as road maintenance,

classroom and school facilities grants, or local government development programme (LGDP). Such firms exclusively depend on LG contracts and end up becoming some kind of extension of LG administration system. It is common for the CAO or Town Clerks to ‘summon’ those firms, which are actually called by the owners’ names (pointed out already) instead of the registered firm names for briefing, warning against escalating disputes to oversight agencies or courts, or asking them to bear with them for delayed payments for work already done.

In other words, firms are treated as sole proprietorship and their proprietor as some kind of part-time staff; and an award is not made to the firm but to that known owner. It is also common for the same firm to be used by many people as proxies especially for politicians who avoid direct payments from their LGs. It is like some kind of ‘name’ renting. On other occasions, contracts are allocated to certain individuals through the proxy firms based on sentiments. A district leader’s comment is insightful

You go for burial, the breadwinner has died, and the widow and orphans come to greet you. You will definitely sympathise and even at the funeral they will even say it, “...now sir you have attended you have seen the calamity that has befallen this family so really when we knock at your door, consider.

From the above revelation, award of contracts are more than just business with the LGs, it carries with it social issues and these enter calculations behind decision-making as argued in the conceptual framework in chapter four. Sublime local saying backs sentiments. For example, a head of PDU reported an incident at an event of closing day for submission of bids. Some bidders had arrived late, past the advertised deadline. The chairperson of contracts committee who had been invited to witness the occasion reasoned, “...they should be allowed to submit, and you know for us [tribe] we are receptive and we are kind people... We are not supposed to be rigid. We are accommodative, and so we can as well receive these bids”. According to PPDA regulations this would be a very serious breach of formal rules and the formal action should have been to reject the bids unopened but now it was being argued as acceptable to the chairperson on the basis of local norms. The chairperson’s calculations in this case goes beyond business expedience to social expedience and whereas there are social

sanctions for not complying there is no obvious formal sanction for violating this unless a specific complaint was raised by one of the firms. That seems unlikely because local bidders are also similarly bound unless there was one from outside the district.

In multi-ethnic districts, or municipality a balance has to be made between these major ethnic groups in award of contracts, otherwise; it could lead to a political crisis with calls for a separate district for the ethnic group feeling marginalised or promising to punish certain politicians come next election. A chairperson of CC reported

...after we have made decisions to award contracts, I have to take the list to the chair to brief him on who got what by name. If he feels there is no balance among various interest groups, he can ask us to revise the awards to correct any imbalance and revise the minutes accordingly.

As already observed the concept of fairness as defined in formal terms (PPDA Act) takes different connotations at the LG to incorporate balancing social and political considerations. Indeed many respondents observed that the law was tailored for large firms and perhaps for western democracies. Others as observed elsewhere accused it (PPDA Act) of focusing too much on procedures and less on achieving value for money.

Part time construction firms at the local government

Findings indicate that firms at the LG level require few assets specific to construction business. Most of the time they hire the equipment they require such as a dumper and therefore bidders can easily enter or exit the business at minimal costs. Entrepreneurs, as already observed, may rent firm names and curriculum vitae (CV) of requisite experts in order to win a contract. It was pointed out by many respondents that often 'firms' which thrived during the tenure of office of one chairperson can 'disappear' (fall out of business) under another regime. This in a way reflects close ties between those granting the contracts and those carrying them out at the LG level. Large construction firms at the centre are stable and with millions of dollars of investment into construction facilities. Their view of business is long term, which may tend to spur a disciplining effect on them. Besides the market they

operate in goes beyond Uganda and some firms are regional while others international. Many local firms are more concerned with good reputation as locally defined.

Glorifying informal and reviling formal rules

Findings seem to suggest that one cannot take for granted that formal rules regarding public sector outsourcing and indeed public procurement to enjoy full public support. At least a cross section of people interviewed reported that there was a general expectation for them to bend formal rules if they are a constraint, to allow them to benefit themselves and others close to them in one way or the other either through blood relations or through some other close social ties. One would be considered a 'bad' person if no attempt was made to support bids for contracts or other jobs of those close to a public official. Such an official who sticks to formal rules that excludes members of his/her social networks expects such labels as 'bad' person; 'is not helpful' he or she 'is a pretender' '*yata ekifo*' [spoilt that position]. Results lead one to believe there is a general cheer for public officials who bend formal rules to 'help their people'. They are given favourable metaphors such as '*muntu wabantu*' [peoples darling], '*mulungi ategera*' [good and understands]. Amidst this kind of social pressure many may be encouraged to bend formal rules unless the costs are dire and immediate. It can be a challenge to observe strictly formal rules in many LG settings and even at the centre. An Under Secretary who believed he had been demoted by a transfer from a large ministry to smaller government department recounted

When you are near to the District Chairperson, the better... The more the chairperson says this is my officer, the better for you. But also in central government, it can happen. I can give you an example. I was in AA [ministry]. I think I was effective. But the Minister said BB is very hard. I said to myself, what did I do? BB is very hard. I don't know. Maybe that is the reason I left AA early. I did not understand what the Minister wanted me to do. I am hard. I am hard! I do not know why I am hard. So, hard means what? Hard means I was very tight on following government procedures and rules. I was sticking to the formal rules. That is why I was difficult and hard. He even mentions it in a meeting and in his end of year speech at the ministry headquarters, he asked, "Where is BB? He is very hard!" I wondered, do I get money and put it in an envelope to take to the Minister? I was startled myself. And may be the reason I left AA was that...

The puzzles of the senior public officer above corroborated with a head of a LG PDU and secretary to a CC who stated, "I think attitudes and pressure from the public are not

supportive of formal rules. Like when you are involved in procurement ...the public would expect you to be rich...but if you are not very stable, you can end up being swayed...” The cost of adhering to formal rules can be high. A head of a civil society organisation with a community radio and familiar with a particular LG setting seems to sum up this attitude

Traditionally, in this part of the country, a hero was one who went out to hunt or fight and brought the goods or ‘*omunyago*’ [loot] home. That is possibly, why in Karamoja up to this day cattle rustling persists. One who does not participate in cattle rustling can be publicly humiliated at a social event. But in modern days you are educated by the family at a very high cost to go out there and bring the goods home. How you ‘hunt’ or ‘fight’ is up to you as long as you bring the goods home you are not only a pride to the family but to the entire community.

Indeed a certain politician who was arrested and served two years of prison sentence in a foreign country was received as a hero by thousands of supporters on arrival in Uganda. He was later re-elected mayor of a city.

Whereas these attitudes glorify some behaviour that clearly violate formal rules, one can not necessarily use it to explain corrupt behaviours. A separate study would be necessary for this. But perhaps in that observation lays the answer for reviling of adherents to formality, which in effect stands in the way of particularistic services to those who belong to your social networks and quick accumulation. “You want to use your ‘*mateka*’ [formal rules], they will isolate you. It can really bite,” another respondent observed.

Local government politicians or local traders?

“It is too difficult to think nobly when one only thinks to get a living”
Rousseau

Respondents reported that political leaders and interest groups perceive LGs as the main source of formal employment through trading by supplying goods and services including construction jobs. The political and economic importance of a district or municipal LG was explained in chapter five but for many areas especially rural areas it is the only major ‘economic enterprise’. Because of their strategic economic importance, LGs become objects for control in order to earn a living especially by the political and business elites. The

explanation below gives an idea of the number of political leaders who may be interested in trading with the LG.

As pointed out in chapter five, there are numerous LG elected leaders at various levels from local council one to local council five. The overall political head of the district is the district chairperson elected by adult universal suffrage. He or she chairs the district executive committee (the cabinet of the district) and they are prohibited from holding any other office of profit likely to compromise their office. They work full time at the district headquarters.

District councillors from among whom the chairperson forms a government are also elected by universal suffrage from LC III. At the LC III is a sub-district LG –rural or municipality, where the structure of a district LG is replicated. At both levels there are elected leaders representing interest groups such as women, people with disabilities and youths. There are also other politicians at the LCs I, II, III and IV. Only district and municipal LGs and referral hospitals (where they exist) have contracting powers and therefore do their own procurement. All other lower government councils must refer their procurement to the district PDU.

Local politicians particularly the district chairpersons have controlled procurement and outsourcing of construction projects since decentralisation policy began in 1993. Before the amendment of the LGA they nominated the district tender board (DTB) which allocated tenders. Also chairpersons nominate the DSC members, the organ that appoints, promotes or retires district civil servants. Respondents reported instances of TB members or engineers who were dismissed by area chairpersons for perceiving them as disobedient even when they were not supposed to receive direct instructions from him/her (chairperson) as there is an AO.

In an effort to regulate the district chairperson's powers, as pointed out above, the position of AO was moved to CG control and the CC (formerly DTB), was brought under the control of the AO. When I asked respondents to comment on whether these reforms had had any effect,

the response was that they had not noticed any change. One respondent replied "...the chairman still calls all the shots. If you disobey him he has many ways to make your work and stay in the district very difficult". Respondents said that one way they can achieve their objectives is to praise or despise your work in public. "If your work is despised at a rally it can be terrible!" Others pointed out that the chairperson can shun social occasions of the officer he or she does not approve.

Communities value the presence of such a politician at their occasions and it can be a driving force to maintain a favourable relationship. "So you need to be in the good books of the chairperson. In any case, the rest of us staff, we are under the district service commission, which the chairperson appoints. CAOs come and go, the Chairperson will always be with you whether in office or out of office," remarked a district engineer. One can explain persistence of previous situations in spite of policy changes on path dependency theory (North, 1990). The situation prior to abolition of the DTB continues to determine the current affairs through institutions that had developed.

Due to much power wielded by the chairperson, he or she can decide who takes what contract and who is confirmed in what position. One CAO disclosed that few district chairpersons prefer qualified and competent engineers and pointed it out as an explanation for many vacant or acting positions of District Engineers. "Actually it is a big problem, as we even talk now, there are very few districts with District Engineers, and that is the reason. And the politicians have made sure that these positions are not filled ...somebody who is there ...is just acting, he can be pushed from all sides, and he will accept." The problem comes at supervision of contracts (subject of next chapter, seven) as to whether an engineer in a precarious position can strictly enforce the provisions of the contract especially where politicians' interests are involved. The next section discusses institutional interaction in sub-processes leading to contract award.

Influence of institutional interactions on pre-award processes of outsourcing

In the literature review, it was noted that institutions reinforce or counter one another in their coexistence in the institutional framework leading to a phenomenon of institutional layering (Pelling and High, 2005) and institutional conversion (Thelen, 2004). This section deals with how interplay of institutions is influencing outsourcing of construction projects in the pre-award sub-processes.

Through interviews and documents reviews, it was evident that some traditional beliefs backed by sublime sayings have been used to explain public policy and guidelines in a manner that deviates from the reform objectives. As already pointed out, the PEAP which has been popularised by government as '*Boona bagaggawale*' is now being used to avoid national-wide sourcing of contractors. Some local governments are also using decentralisation policy, which aims at being responsive to needs of citizens; have reinterpreted decentralisation as *localisation* by trying to restrict contract awards to firms that belong to people, they consider indigenous to their areas of jurisdictions. In addition, an elected chairperson who is supposed to be a servant to the people is treated as 'head of family, and heads of families in Uganda are generally allowed a high degree of 'dictatorial powers' which such leaders exploit in awarding contracts. The same phenomenon seems to interfere with democratic governance in the country.

6.5 Summary of the chapter

This chapter had three major objectives. In line with overall objective, to explain the influence of institutions in the process of outsourcing public construction projects in Uganda, the chapter has; firstly, identified statutes as sources of formal institutions relevant to outsourcing of construction projects, secondly, highlighted decision points which present levers to actors to exercise forum shopping, thirdly explained how formal and informal institutions interact to influence construction projects.

Findings indicate that statutes related to the project phases from selection to award of contract were:

1. LGA which empowers LGs as local planning authorities to prioritise projects for implementation. These powers are however constrained by limited discretionary funds available to them as the bulk of the budgets are conditional grants from CG
2. Building codes issued by MoW&H prescribing general and detailed specifications
3. FIDIC and other international standards (British, WHO and UNICEF)
4. Town and Country Planning Act, 1969 for regulation of building construction
5. Engineers and Architects Acts
6. PPDA Act 2003, accompanying regulations and guidelines

The leverage points that present opportunities for forum shopping were found to be:

- a) Whether or not to outsource a consultant for design of a construction project;
- b) A User Department deliberately delaying requests to PDU until the procurement lead-time is limited to create an emergency procurement situation;
- c) Clients' actors keeping the engineer's estimate confidential or leaking them to prospective contractors;
- d) Undertaking restricted invitation with or without pre-qualification;
- e) Observe a strict regime of deadlines in outsourcing process or relax them;
- f) Adhere to a strict formal methodology and criteria developed and communicated in the solicitation documents *a priori* or apply an informal criteria based on social and other criteria;
- g) Include negotiation and construction asset inspection prior to a contract award decision or not;
- h) Follow donor's guidelines (in case of donor funds) or stick to PPDA regulations and guidelines ;

- i) Introduce or exclude a requirement of “no objection” from PPDA or a donor.

Evidence shows that while central and LGs are equally empowered by the law to undertake any size of construction projects; in practice LGs generally undertake small and less complex projects, while CG undertake all types including large and more complex projects.

Due in part to the differences in sizes of projects undertaken at the central and LGs, the type and number of actors directly involved in the outsourcing processes are different. At CG level, consultants are hired allowing for separation of functions between design, construction, and construction supervision. Firms contracted at the CG tend to be large and some international, while at the LG level, firms are generally small and owned by local entrepreneurs.

Further evidence indicates that processes preceding and actual award of contracts appear to be largely influenced by formal institutions. This seems to be particularly so in large and complex projects especially where donors are involved in issuing ‘no objection’ as the process progresses from one phase to another. However, small projects where donors are rarely involved directly tend to be influenced more by informal institutions mainly due to the scope of social ties among actors. Nonetheless, unlike at the LG level, the firms that win contracts are not biased to a particular physical location indicating that perhaps that bridging social capital rather than bonding social capital mediates the processes.

On the other hand, at LG level, processes are largely influenced by informal institutions. It appears that the dense networks pre-existing, reproduced in the LG system influence informal dealings, and generally excludes firms owned by entrepreneurs who are not connected to local networks. Evidence analysed in this chapter indicate that actors at LG tend to be more embedded socially and has led to ‘market failure’ in sense that the competition and free information flow assumed by the neoclassic reform has not been realised so far. It also

appears that the same situation (of market failure) pertains at the CG level except that generally on 'paper' they appear to comply with formal rules.

One way to sum up this chapter, is to separate views of private sector and those from public sector concerning processes that lead to award of construction projects especially small and less complex ones both at central and local government levels. Many contractor respondents believe that one needs to gain informal relationships with significant persons in the public sector outsourcing system to increase chances of doing successful business with government.

CHAPTER SEVEN

INSTITUTIONS AND *EX POST* CONTRACT AWARD MANAGEMENT

All have sinned and fall short of God's glory. Romans 3:23

7.1 Introduction

The preceding two chapters analysed the influence of institutions on the *pre*-contract award process of outsourcing construction projects. It was noted that informal institutions play significant roles in planning, solicitation, evaluation, and award of contracts. The degree and manner of influence is not the same at each stage or at each level of government.

This chapter continues analysis of the influence of institutions turning attention to *post*-contract award phase –*the contract administration and close out stages* (management). In particular, the influence of institutions on key actors' decisions in these stages is examined. Attention is devoted to how institutions influence the actions of the engineer as a street bureaucrat and the AO of PDE both of which are key actors on behalf of the public client in construction contract administration. The analysis is guided by questions that informed the data collection process in the first place. The main research question addressed is; which types of institution(s) are *actually* preferred in enforcement of formal contracts in outsourcing construction projects in Uganda and why? in line with the corollary proposition that; *formal institutions are more likely to influence the process of public sector outsourcing of construction projects at the central government level more than at the LG level due to perceived lower transaction costs of using third-party contract enforcement.*

The chapter argues that post award phase of contract Management is dominated by a formal institutional regime at CG level especially for large projects and by an informal institutional regime at the LG level. It is further argued that an award of a public construction contract in certain contexts, is an aggregation and a symbol of numerous social contracts that have already taken place or are due to be actualised by the implementation of the project.

Four sections constitute this chapter. After this introductory one, the second section examines the applicable law, regulations, and guidelines followed by a discussion of institutions actually influencing contract administration and closeout. Section three, puts together sections one and two as a summary and draws some conclusions.

7.2. Applicable law to *ex-post* contract award management

Through a procedure of discussions with interviewees and the review of official documents, the study results reveal that a number of sets of informal and formal rules and organizations are applicable to *ex-post* contract management. The first, already identified in the previous chapters, is the PPDA Act, its accompanying regulations and guidelines. All respondents named this law as the main formal framework for regulation of outsourced construction projects.

Secondly, the law empowers a number of actors to manage the construction contract on behalf of the client (owner) and for the good of the general public interest. The PPDA Authority is one of the key actors regulating the process of contract management. It provides the types of contracts permitted to be entered into by contractors and clients including prescribed forms they should assume. The Act provides a clause that empowers the PPDA authority to grant appropriate deviations if applied for by the PDE and deemed necessary. Other key actors, in contract management depicted in figure 5.8 of chapter five, are the Boards or Councils, CCs, the *User Department*, the *PDU* and the *AO* of the respective *PDE*. Others are the *Contractor*, the *Consultant*, and sometimes an *Advisor* from a donor agency.

Thirdly, construction being a specialized form of outsourcing (to manufacture buildings and products of civil engineering works), there are dedicated statutes to the industry as were pointed out in chapter six. They include the building codes, Engineers and Architects Registration Acts, and various guidelines and administrative orders issued from time to time

by those with appropriate authorization. These statutes and administrative orders specific to construction industry prescribe standards for the professional actors.

Fifthly, the professionals on their part may institute private ordering mechanisms (Williamson, 1995) to protect the reputation of their role in the industry.

Sixthly, the international standards, and organisations such as FIDIC and guidelines of donors who finance construction projects in Uganda are also applicable. Both the PPDA Act and any adopted international regulations such as FIDIC or World Bank, prescribe standard contract forms. Respondents observed that it depends on the financing agreement. Typically, the guidelines of the donor take precedence.

However, forum shopping involving alternate use of PPDA guidelines and donor guidelines often create confusion. A respondent from an oversight agency pointed out that "...the problem we had with donor funded projects, their procurement specialists would ignore the Ugandan law completely." This was because they would communicate with their organisational headquarters directly. "Now we have sorted it out, just as much as they are following their guidelines, they must respect the structures, which are prescribed under our law such as the contracts committees." All communication to donors concerned with procurement must be cleared by the CCs "Because just as much as these are donor funds, but they are given to GoU"

The Ugandan law specifies that the solicitation documents spell out the applicable guidelines upfront. Grey areas exist where the international rules are silent on particular aspects for which the Ugandan law pronounces itself. Whereas the World Bank may require a 'no objection' for the process to be progressed from one step to the other, the Ugandan law as already pointed out requires approval by the PPDA Authority for major deviance from PPDA guidelines.

Seventhly, the more particular and most important encapsulation of rules for a particular construction project is the *contract* clients and contractors sign. The contract agreements between the client and various service providers including the contractor of works form specific governance devices supposed to regulate particular arrangements. Typically, the trail of documents built up during solicitation including post-qualification or negotiation (if any) prior to award of contract, form part of the contract as will any variations duly agreed after the signing of a contract. Section 228 (b) of the PPDA Regulations state “all correspondences between a procuring and disposing entity and a bidder since the submission of the bids ...shall form part of the awarded contract”. However, in practice how these statutes, organizations and arrangements function, is the empirical question of this study.

7.3 Institutions *actually* influencing contract management- central government level

The functioning of the statutes and other formal rules, and organisations interact with other elements of the socio-economic contexts as was pointed out in the literature. Contexts and sub-contexts discussed in chapter four in which actors in outsourcing construction projects function to exert influence on the outsourcing process include central and LG levels and their respective frontline operational environments. This section deals with contract management at CG level beginning with two common ceremonies –contract signing and groundbreaking ceremonies, discussed below.

Ground breaking ceremonies introduces project to communities

The norm of project launches or groundbreaking ceremonies, typically presided over by politicians, provide opportune moments for explaining the project objectives, source of funding for project and introduction of the contractor and Project Management Committees (PMCs) where they exist. During the occasion, it is also explained how the community would benefit from successful implementation of the project. Project launches of large construction projects and indeed for any other major development projects are well-established routine in

Uganda. A respondent quipped, "...some projects are launched but never get implemented". The respondent was probably referring to projects that are launched prematurely especially in times preceding general elections which another respondent mentioned. This is probable because construction projects are visible and their identification and selection are usually characterised by intense lobbying and political pressure especially road construction projects.

A major challenge revealed through interviews was that during contract management most of the supervision and monitoring of the projects is uncannily left to the consultant and sometimes to a designated in-house engineer contrary to the formal guidelines and best practice, which provide for a PMC. Official guidelines issued by MoFPED provide for at least a five percent (5%) mark up for the purpose of strengthening the supervision and monitoring of projects including regular PMC meetings. Findings point to a mismatch between budgetary provisions for supervision and monitoring on one hand and the intensity of supervision and monitoring actually undertaken. On the lack of emphasis on PMC meetings, one respondent from an oversight authority decried

"...in contract administration; ...there should be a contract management team; one composed of representatives from the ministry for example, from the procuring entity and the contractor. You meet periodically; you assess the progress of the project. Look at the risks...but many times this is not done.

In general, respondents agreed on the lack of project teams (PMCs) institutionalisation. A

Extant literature recommends that both technical (technical committee) and policy level (project steering committee -PSC) communication should be organised. It allows for project integration, flexible but judicious change or variations control and the building of trust among actors important for learning. Integration is important because change in one aspect of project scope has implications for the rest of the components of a project system (Kerzner, 2001).

It appears that the consequence of having no functional PMCs explains in part the power wielded by project consultants and project coordinators or managers whom accounting officers appoint. The power these frontline agencies (street bureaucrats) would have shared

with PMCs is concentrated in the hands of a few actors as discussed in chapter three. The next section discusses the frontline actors and their role in construction projects.

Role of frontline actors

The findings indicate that AO appoint a senior official of a user department of the PDE or the head of that department assumes the role of manager/coordinator of the project implementation including working with any consultants who are contracted to technical support. On the supply side, a contractor and the consultant will also designate project managers, all of them usually engineers, although a consulting firm can appoint an architect. These professionals exercise a lot of discretion on the implementation of the construction projects albeit the existence of a contract. They can stick to the specifications in the contract or modify some with no reference to anyone else if they so wished. It is possible for frontline actors' behaviour some of which may be opportunistic to be concealed from their supervisors, a phenomenon known as information asymmetry. These discretionary powers are enhanced if one or both the consulting engineer and the client's project coordinator were involved in the project design. According to the literature reviewed in chapter three, frontline workers do not do what they want or just what is in official guidelines, formal contracts, or instructions by their bosses, but what they can or is possible as far as they are concerned, a phenomenon encountered by Brodtkin (1997). To develop this point further I discuss each frontline worker in turn in order to explain what institutions are actually preferred in contract administration and closeout.

The contractor's project manager

Chapter six discussed different types of construction firms and their ownership. Concerning how firms are organised for contract management, findings suggest that owner managed firms mostly act as their own project managers while for others they hire dedicated project engineers. Table 7.1 sketches the types of firms and their common project managers.

Table 7.1: Type of firm and project manager (PM)

		Type of ownership of firm		
		Ind. Ugandans	Foreign firms	Mixed ownership
Type of firm	Owner PM	Most firms	None	Few
	Hired PM	Few	All	Most firms

Source: Field data

Firms owned by indigenous Ugandans mostly do not employ project managers but the owner or one of them acts as the project manager while foreign firms exclusively hire project managers. Local firms are generally family business true to the history of construction firms as observed in chapter three. Mixed ownership firms generally behave like foreign firms with a few where one of the owners may act as project manager.

Construction firms owned by indigenous Ugandans are generally less in size than the rest of the other categories of firms when one considers financial³⁰ and works³¹ capabilities. That may explain why the founder or owner often performs the role of a project manager although there are instances where they may hire a project manager especially if they are themselves not engineers. Among non-engineer category owners, the tendency is to hire technicians that are willing to accept less pay than the market value which sometimes leads to hiring quack professionals. A respondent observed

...there is a general lack of appreciation for the value of professionals and people end up hiring *kamyufus* [quack engineers] instead of well-qualified engineers, preferring to bribe court clerks instead of hiring lawyers to argue their cases.

³⁰ **Financial capability** is evaluated in terms of the largest construction contract the contractor has performed in the past 5 years and value of its construction facilities and equipment

³¹ **Works capability** is evaluated in terms of number of qualified professionals in their employment on full-time employees

This preference to hire *kamyufus* seems to pervade the private sector generally. The recent wide spread collapse of buildings in Uganda has been attributed to employment of contractors who are not qualified or are poorly supervised (*The New Vision 3rd February, 2008*).

Government bureaucrats interviewed observed that project managers and their indigenous Ugandan owners generally prefer to be informal in their dealings with both the client and the consultant. They tend not to respect formal channels of communications as spelt out in the contract documents. This general belief in informality is becoming like a national culture. A head of an engineering directorate in a government ministry remarked

...our Ugandan brothers prefer casual communication. They work as if there are no contracts [formal]. If a contractor has a problem at the site, they prefer to talk to the Minister or Permanent Secretary even for simple issues...*tofayo gundi mumanyi nja kumukubira esimu* [I know so and so I will call him on phone] for something that could have been resolved on site or by writing a letter as spelt out in the contract.

Other respondents described local companies as having limited internal written procedures to guide their operations; "...the man is the MD [Managing Director], the Accountant, chases certificates [performance] and creates confusion". This limited separation of roles precludes use of formal procedures and promotes informality that seems to assume national cultural proportions (The World Bank, 2008; OECD, 2008).

Foreign or mixed owned firms generally deploy hired project managers. They are generally more experienced with complex projects and have performed contracts of large financial values. Respondents observed that while many indigenous firms, especially the small ones want to cut corners and avoid close supervision by hurrying to do works instead of waiting for engineer's instructions for every stage, other categories of contractors understand the rules and respect the structures. Concerning the behaviour of large and particularly international firms, an engineer with long experience in government service observed

...they wait for engineer's written instructions, if they receive a verbal instruction they confirm in writing, when they send a letter it has to be acknowledged, when they receive yours they will acknowledge, they don't proceed until instructed, if you delay to issue instructions, they send a claim for redundancy

The market they operate in is regional covering more than one country in the East Africa and beyond. International big firms have a wide catchment area and Uganda may not even be their priority market, so if a client delays to pay, the firm will sue and claim interest.

A characteristic of large firms as earlier observed, hire a wide range of professionals including lawyers, accountants, quantity surveyors, big subcontractors and others. Each of these professionals is working on a contract to ensure compliance on their part but also on the part of the client's obligations. This may partly explain why in contracts where they are involved, formal rules tend to be observed more. It is probable also that the behaviour of large firms focuses on building a business reputation for the wider market other than focusing on a single client. They prefer international standard and guidelines according to FIDIC or World Bank other than Ugandan Standards. Their decision-making and actions appear concerned more with global institutions. As an example, for single PDE like a ministry, projects are rare and far between, although for entire range of public projects the frequency of contracts is more. Therefore, large firms will tend to focus on building a reputation of performance rather than forging a social relationship with a single client, which appears to be the case for firms specialising in doing business with a local government. They are concerned about what might appear in the news because then it ends up on the internet, a global institution that could damage their regional standing.

The consultant's project manager

The consulting firms appear to occupy a privileged position in the construction industry in Uganda. The contractor has to accord a consultant respect and obey their recommendations. It is a traditional view in construction industry. One respondent from a consulting firm described their position as being like that of a 'king'.

...you rarely find a contractor wanting to conflict with the consultant, at least in Uganda here, very rarely, because you might conflict with him, on one project, then there is another project coming and you will meet each other... they take you as king...they will not want to disobey you.

This seemingly privileged position of the consultant gains further significance by their involvement in more than one phase of the outsourcing cycle. This is common especially with clients who do one off construction projects. These types of clients would normally lack staff with engineering background. In that case, the Consultant does most of the work right from design through solicitation to contract administration until the project is closed. “Our position is normally strengthened by being involved in procuring the contractor, and then...you are the one supervising...,” remarked a business manager of a consulting firm. Other respondents pointed to the strength of the consulting firm that comes with many years in the industry. “Your position is even stronger if you have been around for long...these engineers may have been your pupils during their industrial training or you have worked with them on previous projects... gives a special connection to have a smooth working relationship”. Clearly, the consultant in question would be enjoying personal social capital depending on the social reputation built over the years. It could as well be social liability and therefore disadvantageous for being around for too long. However, this privileged position seems to be narrow in scope for indigenous consulting firms because it tends to be limited to small projects and perhaps less complex medium-sized projects as explained below.

In chapter six, the structure of ownership of consulting firms was examined and it revealed that international consulting firms supervise big and complex projects more. In general, consulting firms who traditionally used to be regarded as independent have had their position reviewed in recent years (Ndekugri, et al., 2007). Findings in this study do seem to confirm the changed view of ‘independence’ and ‘neutrality’ of a consultant. There is a possibility that consultants favour certain contracting firms when they participate in both evaluating bids and later in supervising the same projects. Literature agrees with these suspicions of apparent lack of independence and impartiality by proposing sub-division of the role to separate functions of design, supervision, adjudication, and overall project management and allocating it to different actors (ibid).

The central government street bureaucrat engineer

In chapter six, it was noted that the government engineer initiates a request to the PDU and later participates in bids evaluation before contracts are awarded. In the post contract award, the engineer is the frontline bureaucrat working on the project on behalf of the client. The engineer as a street bureaucrat supervises a particular project or a cluster of projects (programme). Respondents interviewed observed that the main role is to adjudicate between the consultant and the contractor or contractor and the stakeholders in the public. Engineers interviewed did not consider this role interesting enough as one of them remarked

Now, I do not know how I call my work, because it used to be to manage building projects. You get a project, you manage that one but now this has gone beyond project management. We are managing managers of contracts and they are presenting whatever they do to you and you are responsible. So, I do not know what I would say in this situation because this one I am not handling anything directly.

This seemingly sense of disillusionment was expressed by many CG engineers and may partly explain why they make attempts to determine who wins a contract as was pointed out in the previous chapter. It is also possible that full decentralisation to LG has been slowed down or even reversed in some instances. Engineers may attempt to control the outsourcing process by influencing the composition of the evaluation committee via the PDU and indirectly or directly to CC through interfering with the formal procedure of independent action by those respective organs. By succeeding in getting ‘friendly’ [trustworthy] contractors, this secures their own interests. Others reported “...we now invest in equipment to rent them to the contractors we supervise in order to ‘survive’. “Once a contractor has rented your equipment, you become an interested party and you are likely to be sentimental.”

Nevertheless, this arrangement is mainly possible with indigenous Ugandan firms who may lack sufficient construction plants and whose managers belong to professional and social networks. Big and international firms are generally self sufficient with such equipment and sometimes the project managers may not belong to same networks as the supervising

government engineer. However, in spite of lack of strong social connections with them, government engineers admitted that they (large international firms) are better to supervise.

I would be happy to supervise a big company. They put the correct people there, follow the procedures, know the rules and what to do. May be that is why a professional lawyer should be the one to represent you in high court. It eases the work of the judge.

Government engineers would rather do without consultants. Consultants are generally demanded by donors according to a respondent who argued "...I am a registered engineer, am the consultant, you are registered – here we may also have an architect. You know. You explain to them and sometimes they accept. But in most cases donors, are the ones who push for consultants. So consultants are there, but you are also, there ..."

This section has pointed to dominance of formal institutional regime in managing post-award phase of construction projects at the CG level. Because of their size and involvement of large construction and consultancy firms some of which are international, including the involvement of donors, the tendency is to prefer formal institutions. The next section turns to LG post-award management of contracts.

7.4 Institutions *actually* influencing contract management -LG level

Respondents variously used metaphors like "messy", "stampede", "bull in china shop" and "chaotic" to describe procurement generally and outsourcing of construction projects in particular as far as LGs are concerned. These responses were mainly from actors who have experiences transacting with central as well as LGs. One Architect with 30 years work experience both as a government bureaucrat and now in private practice, when asked about his experience with LG replied "... am not interested. Not at all! I am not interested. ... I am not interested..." The Architect explained that he had had a bad experience with the chairman of his home district trying to co-opt him in unprofessional decisions. However, what appears to have no pattern when using a formal institutional frame of mind has meaning and orderliness when assessed based on informal institutions and trust among certain social networks.

Part of the inquiry in this study was to explain why the two levels of government may differ in their preferences of institutions. This section builds on what was discussed in the previous chapter concerning evaluation of bids and award of contracts at LG. So what institutions *actually* characterise decision making at the LG level to invoke such inference like the one by an Architect?

Ground breaking ceremony or political rally in local governments?

After the award of a contract before construction work commences in earnest, it is a usual practice at LG, just like at LG level, to launch a project. Depending on the political importance of the project, the function can be presided over by the District Chairperson or one delegated by him or her. Its importance is to explain the objectives of the project, the source of funds, and introduce the contractor and project steering committee if one has already been formed. The political leader may appeal to the community to offer support to the contractor so that work is executed smoothly.

The practice is that such occasions are often turned into some form of political rallies and an opportunity for the contractor to win the hearts and minds of the community. "...I throw a round of drinks for the launch for public relations and I do a lot of other community services such as attending burials, carrying patients to hospital, ...to stay in this business you also have to behave like a politician," This was a remark of a district based contractor. It underscores the importance of social capital and it may be partly the reason communities shun firms owned by people who don't hail in the district. On the same occasion, each politician of the area such as area Councillors or area Member of Parliament may wish to appropriate credit. If a section of the political class had favoured a certain contractor other than the one who won, heckling may take place mobilised by a group of supporters of those who lost the bid.

Exchange of roles -contractor and client

After the launch, the contractor may not be in position to mobilize and start construction work due to lack of funds [working capital], equipment, and some key personnel to perform a contract. In some instances the winner of the contract may be looking for a capable contractor to 'sell' the job and earn '*enjawulo*', because using connections, a firm may have won the bid but the capable firm could not win for lack of appropriate social connections. This may be symbolic of what takes place in the process of evaluation and award of contract. A contractor in one of the districts remarked "...But there is a problem I have realised. These people do not go to inspect [post-qualification³²] the equipment. They depend on the documents you presented". This may indicate that pre-qualification and post-qualification which are supposed to minimise adverse selection does not work well at LG level because of possible opportunistic behaviour of bureaucrats and politicians.

In the case of firms that lack road construction equipments, a contractor when asked how they go about dealing with this constraint, remarked "...it is easy. ...you can ask the engineer to use the equipment for the LG, formally or informally. Formally, you go and apply to the district and pay money there." Sometimes this takes time if there are many road construction contracts that have been awarded at the same time. It can delay the work. It is usually quicker using an informal channel.

Although a performance bond is a requirement for signing of a contract, this is rarely executed and if it is presented it may not be genuine. One respondent pointed out that if you get an instrument from an insurance company or bank, you need to follow it up personally to cross check if it is actually genuine which increases transaction costs. This may partly explain why in developing countries transaction costs escalate. There is limited generalised trust in formal institutions. If you write a letter, you may get a reply which is again forged because

³² Post-qualification is a procedure of determining capacity prior to contract signing.

the presenter will set up a mechanism to take care of that. In any case one would know that someone powerful is behind the firm and so the solution is to work out how the firm actually performs the job, a form of *hold-up* occurs at the outset of the contract.

In many LGs in remote locations, the district engineer is often the only and most qualified person in engineering residing in the area. Contractors reported that they are comfortable hiring the same engineer supposed to supervise them or their assistants as their project manager. A contractor quipped

...You pay him [engineer] money to supervise your work ...other than using my engineer. You will never get problems. One, I will be satisfied that he has done a good job, two he will be satisfied that he has done a good job, three he will have gained money out of his own job

When asked how they win contracts without evidence of qualified personnel, a contractor who was also an important district politician replied, we ‘buy’ *curriculum vitae* of qualified people, which they attach to their bids.” But of course you cannot afford to employ them. When you win a contract, you resort to the LG engineers or some other affordable technicians.” This scenario is common because LGs rarely employ consultants to supervise their work. The LG engineers double as consultants as well as (client) project manager. They do almost everything from design, costing to supervision of projects, sometimes even construction. The implication of this on the process of contract administration is discussed further below.

These combined roles make the LG engineer (district or municipality) a frontline bureaucrat with very wide discretionary powers and a major target of those seeking to influence the outsourcing process of construction projects at LG level. Three main categories of actors seek to influence the engineer at the LG level during the post contract award phase (1) the contractors, (2) the CAO or Town Clerks who is the direct supervisor of the engineer, and (3) the politicians.

The contractor as an entrepreneur is seeking to maximise profit through minimisation of costs and receiving payment as early and as quickly as possible. Some contractors are just speculators who want to make quick money. This happens with small construction projects.

One professional engineer in construction business lamented

There is a lot of speculation here, when people know there is business in Sudan [neighbouring country], they go. When there are many schools to construct, they form companies and they come. Now they want to operate it like a business [unprofessionally]. In fact, we normally have a lot of problems because some of them cannot even claim”.

As has already been pointed out, many contractors at LG level are cash trapped with low or lacking engineering and managerial capacity to perform the contracts they sign. Local politicians by proxy own many of the local firms, which affect the extent of authority the engineer who is an employee of the Council can efficiently exercise in contract enforcement.

An engineer remarked that one time he was forced to withdraw a warning letter he had issued to a contractor who was breaching some terms of the contract. The contractor appealed to a politician. I was told that “...yeah, but when someone does wrong, you ...can whip him but do not kill him.”

Further, because contractors lack capacity, LG engineers spend a lot of time coaching and helping them to perform.

You see a contractor who is going to make loses the way he is organising his work. You have to step in to support that contractor. Some are stuck for lack of capital. So a slightly inflated certificate of progress can be issued to get them some liquid cash to go ahead.

Supervising engineers issue certificates to contractors to facilitate them receive payments, whether advance, interim or stage payments; including any retentions and required securities or to indicate that full performance of a contract. It is the certificates that some engineers manipulate to facilitate contractors receive extra money than the work actually performed, in effect receiving credit. A contractor when asked how they are helped by engineers financially observed “...if I am stressed, ...he may say let me give an advance of 20 per cent of the work that is yet to be done...may be like an equivalent of some millions.” Contractors submit to the CAO or Town Clerk for authorisation of payment based on certificates together with invoices.

As pointed out earlier, the CAO or Town Clerk is the AO for the PDEs and among their duties is being chief monitor of the implementation of LG projects. These AOs as earlier observed used to be direct appointees of respective LGs until the 2006 LGA as amended. During this period prior to the amendment, most of the conflicts always revolved around procurement (IGG Reports 2001-2005). These AOs take responsibility for effective performance of construction projects but must be dependent on their engineer for technical direction.

However, some AOs admitted that they treat with caution their engineers' reports including certificates of progress or completion they issue. The revelation below sums up this point

I have seen cases in local government where somebody says the man has roofed when actually the man is at ring beam that is your engineers in local government. If the CAO is not vigilant, like I was, - when the man says it is ring beam, I get the DEO [District Education Officer], the engineer, get in the car, let us go. We reach there; I find the school building at ring beam. ...so I would have paid a certificate of roofed, ...when actually it is ring beam. Why? The company, which is doing that job, does not have the money. In other words, I am advancing money to the contractor to do for me the job, which the government ran away from. Otherwise then I would give my money to the engineer, to go and construct the school anyway. You are supposed to do your work and then I pay you after. But these cases I have found them in districts as accounting officer. Several times. Even at the head quarters [Central Government]. A company supplying furniture, the man says all furniture delivered. I said okay, ...let me drive there. The chairs were not there. I had to suspend engineers. I have suspended engineers ...several times on these things I am talking about.

And one of my colleagues is a CAO, he says Mr XXX if you find me in jail come and stand surety for me. I gave out money for classroom construction, when the people came from the ministry to go and check, the schools, which are supposed to be complete, were at window level. He confessed to me and told me that if arrested, I should go and stand surety for him. Why? He trusted his engineer. I mean who are you to doubt your engineer? The engineer says the school is roofed.

If I had not taken that initiative to go out, if I trusted his word, what would have happened? So, those are glaring examples of local government. It is a nightmare. For me, I used to go physically and two, I would never bid any civil works under third or tenth party. ... And I was able to flag down people. That was the only thing I had with me. I would flag and get away with it. I would even go even if it was a councillor constructing, even a chairman, I would say I am not paying, because that work is not correct, and he would do nothing to me, because that is a fact and he would not touch me anywhere and say, "you are also constructing this school.

These measures are unnecessary for a system that is pervaded with institutional trust and professional integrity. The same thing at municipality was pointed out that in order to protect the engineer or minimise possible abuse of discretionary powers, the Town Clerk issued an administrative order requiring that at least two people, the municipal engineer and another

person of engineering department, sign progress or completion certificates. Again, a job meant for one person has to involve more people, raising the transaction costs.

Whereas one can easily prejudge LG engineers as irresponsible, in reality they are trying to cope with situations they find themselves operating. The inbuilt 'adverse selection' of contractors, not necessarily because there was information asymmetry, but due to rent seeking behaviour of some political leaders leaves the engineer to work with incompetent contractors. Many contractors at LG lack adequate funding and performance skills. In order to ensure projects are completed as per contractual provisions, LG engineers work out ways and means to ensure work is done. This view was supported by one CAO who observed that they have to find innovative ways to make the contractors perform. He gave two cases in two different stations where he was forced to persuade a contractor to sub-contract the work to a more competent firm and work out informal mechanisms to ensure the sub-contractor receives payment.

This personal effort on side of the CAO was necessary to ensure the contractor who had failed and was still legally the direct payee for the work does not cheat the sub-contractor. "We go into all this because cancelling a contract is a disaster." Costs go beyond this particular contract. "Unspent funds will be recalled to by central government at the end of a financial year and councillors will be on your neck for non-performance. It may also mean less funding the following financial year from central government. We take all these into account." So in effect, the LGs enter a 'hold-up' when they award a contract. It is difficult for them to terminate a contract.

A central government engineer observed that both contractors and even LG engineers do not seem to understand the contents of the contracts and the importance of some documents. A contractor may not have been given engineers' instructions and one finds a project is completed. "Some engineers do not realise that issuing a clean certificate of completion is not

only important to the contractor but it also enhances the CV of the engineer”, remarked a CG engineer supervising a regional project involving many districts. Besides technical supervision, elected leaders are required to monitor projects.

Projects supervision and monitoring as political work

Three groups are charged with supervision and monitoring of construction projects - the district engineer, the CAO and the politicians. Technical supervision is by the engineer, the rest do monitoring of non-technical issues such as whether work is going on, and the contractor-community relations are supportive of the project. The engineer is authorised to issue binding instructions to the contractor. As one respondent put “...the engineer is hands on, politicians eyes on but hands off”. However, contractors complained that some politicians prefer hands on to the extent in some districts they have been demanding details of bills of quantities in order to determine what was provided for labour so that they can bargain for increased wages and local material prices contrary to the neoclassic prescription in order to get the prices right. They do not differentiate between costs and prices. In some cases, they have incited workers to demand higher wages especially if a contractor is from outside the district. Some politicians want to identify with the project for purposes of winning votes. It is therefore common to see a councillor riding on a grader the whole day during road construction so that he is identified with the project.

The scene for project supervision and monitoring is to some extent set by the kind of contractors who undertake construction in LGs. Both the flow of funds to LGs treasury from CG and local revenue collection including the complexity of the projects; influences the nature of project supervision. The flow of funds is irregular and often contractor payment schedules are breached. Contractors may end up ‘chasing’ a LG engineer to get work certified but an engineer aware of the LG financial situation will be dodging. This sets the scene for disputes to which the next section turns.

This section has shown that contract administration at the LG level is generally regimented by informal institutions contrary to what happens at the CG level especially with large projects. The work at the LG revolves around the district engineer since rarely consultants are hired to supervise projects as is the case with CG. In the next section discussion turns to institutions actually preferred in dispute resolution.

7.5 Institutions *actually* preferred for contract enforcement and dispute resolution

One of the main questions for this thesis was to identify; which types of institution(s) are *actually* preferred in enforcement of formal contracts in outsourcing construction projects in Uganda and why? It aimed at explaining mechanisms employed in enforcement of contracts both in economic and social exchanges. The perceived effectiveness of rules and behaviours of enforcement agencies were probed through discussions with respondents and document reviews.

Findings indicate that whereas contract documents should be the main instruments for enforcement of contracts, in reality parallel informal contracts that are entered into between various individual actors alongside the formal contract play a major role. While there will be a main contractor to produce a road, a school or a health centre building or a water facility, there may be contracts with consulting engineers or architects and others depending on the complexity of the project. However, parallel informal contracts may have been entered between various individual actors. These too matter and may include implied protection on job by a superior, or a promise for a bribe (kickback), or some other benefits such as political support. If these informal obligations are not fulfilled, they could spark off a dispute which may manifest in breach of the formal contract. Contractor's work may not be approved for payment or payment may be withheld because of unfulfilled informal obligations. The informal obligations entered into are not always complementary to the formal contract performance and this may affect effectiveness and efficiency.

Concerning contract enforcement of both formal and informal contracts, the following mechanisms were identified as summarised in table 7.2 below:

Table 7.2 Contract types and preferred enforcement mechanisms

Formal	Informal
Use of courts/litigation	Use of negative gossip
Complain to IGG	Informal blacklisting
Use Arbitrator	Threat to use formal rules
Liquidate bond	Threat to de-campaign
Complaint to client AO	Ostracising/exclusion
Hold meeting	Threat of use of press/media
Terminate contract	Mediation by 'big' person
Appeal to PPDA Authority	Frustrating payments
Threat to stop funding	Public praise/criticism by politicians

Compiled from interview responses

The formal and informal mechanisms for enforcing contracts appear to differ according to the following dimensions, (1) capacity for enforcement of interest, (2) speed to resolve disputes or violations, (3) magnitude of sanctions, (4) ease of detection of breach, (5) power balance between parties to a contract, (6) value of reputation by an actor (7) control retained by actor after involving a third party, and (8) possibility of future dealings either in business or socially.

Generally, governmental actors especially at the LG level prefer to use informal mechanisms and rarely use formal ones to enforce contracts. Even the contractors at the LG level appear to have a low preference for formal mechanisms.

At the CG level however, the contractors have a higher preference for formal rules especially to enforce speedy payments and this is influential in large projects where a contractor may have taken a loan, or secured a large performance bond or advance guarantees, that have high interest rates. So the transaction costs outlay imply failure to perform a contract can spell financial disaster but at the same time stakes for success are also high.

The use of formal communication and threats to go to court tends to elicit speedy responses from CG clients. Actually, GoU in procurement disputes seem to lose most cases involving

private companies because of a tendency for *moral hazard*. An Undersecretary in a CG ministry summed it thus

They default and get away with it, because you cannot enforce due to those interests of other officers in government in that company. But when the government defaults, even these on government side go to the other person and advise “do this and get this money and we share it.”

Or I even tell a contractor...for me to ensure that you are paid quickly, you go and write a letter of intention to sue, then I take it to management and say we are about to be taken to court, and if we go to court we shall lose this case and pay heavily. So, let us pay quickly.

Further analysis revealed differences among contractors operating at the CG level. Firms owned and/or operated only in Uganda tend to prefer informal ways of enforcing contracts because of mutual understanding amongst actors.

However, big firms generally want to execute and finish the job and move on to the next contract. This tends to drive them to adhere to most of the formal provisions of the contract. In any case sometimes their ‘real client’ is the World Bank, bilateral donors and their international consulting firms.

At LG level, almost all actors involved tend to breach some parts in the state law and formal contracts, making it unattractive to go for litigation. There is a sort of moral crisis and no one would easily find moral grounds to rush to formal mechanisms for enforcing the contracts. Contractors reported that a mere threat to take up formal mechanisms makes LG actors to come the negotiating table. However, such a threat by a contractor can also jeopardise opportunity for future contracts not only with a particular LG but also others who will learn about it through networks. Litigation or threats to for litigation is therefore less used because of the possibility of being ‘blacklisted’, albeit informally.

The nature of funding at the LG level also tends to discourage formal mechanisms of enforcing contracts. They are generally slow in imposing sanctions or resolving disputes and both clients and contractors feel loss of control of the process. Delays in resolving issues can easily interfere with flow of funds from CG or donors who often recall unspent funds at the

end of a financial year. Release of funds are generally unpredictable and few LG clients would opt for a process of enforcing contracts that further interfere with the already precarious flow of funds. Funders of LG insist on accountability of previous releases before more fund are released.

Nature of disputes in outsourcing process

Findings suggest that disputes in construction industry are very common. A senior engineer with experience at both levels of government remarked “Actually construction and supervision is swimming in area of disputes from the word go.” This is not surprising because literature also highlights this fact.

At LG level in particular, disputes relate to more than one source. While the main source is in relation to the formal contract between the contractor and the client, there are many other disputes, which relate to the auxiliary informal contracts associated with the formal contract and construction business in general. These disputes may be bilateral between individuals or groups, or between one organisation and others, or community to organisation as presented in table 7.3 below.

Figure 7.3: Common disputes in construction projects

	Disputes arising from breach of:			
	Formal contracts		Informal contractors	
Actors	LG	Sub-contractor	Official of LG	Community
General Contractor	Common	Rare	Common	Common
Consultant	Rare	Rare	Rare	None
CG	Common	None	Common	Rare
Donor	Rare	None	None	None

Source: Interviews and document review **Legend:** CG -Central Government; LG -Local Government

According to respondents, common disputes arise between the contractor and the client whose major source is often disagreement over interpretation of specifications. A respondent on construction disputes commented as follows:

One, a contractor not employing the right personnel; two, because of competition, the contractor wants to minimise costs and maximise profits so he or she wants to take a few short cuts if you are not seeing clearly; three, the works may not have been more specified by the client, and the client

must be expecting this when the document says you can only get this. And the contractor insists that you must get this. So, there disputes arise.

Further, a contractor observed that LG engineers often make mistakes in specifications; “There is a time I did a job of 60 million, it was supposed to have been 10 km, but they didn’t measure the kilometres very well. On assessing the road later I realised it was 13 kilometres” He brought it to the attention of the engineer seeking variation and extra pay. This does raise important questions about professional oversight, corruption, and capacity. However, these generally lie outside the scope of this study.

The other common dispute is delayed payment. LGs were reported to delay interim and final payments. This is understandable because LGs’ main source of funding is CG that often reschedules release of funds for various reasons. LG officials also raised issues concerning contractors’ poor performance of contracts and failure to follow client’s instructions.

On the other hand, parallel informal contracts related to kick backs and such other informal understanding, sparks off disputes. For example, the reality of performing a contract may make it clear that the informally agreed bribe is not tenable. “Of course ...the biggest conflict is the demands from the civil servants, are always very high. Somebody will demand a lot of money, to issue a certificate for payment, - that creates a very big conflict. Sometimes you feel it is too big for your company to pay...” The contractor further observed “...in the informal dealings you can’t give money directly to some people. They have their ‘agents’ who is usually the engineer and coordinates the entire sharing of the bribes –acts like a computer ‘server’ on a local area network (LAN). So you give it to one person but sometimes that money doesn’t reach the destination that it is meant for. So, you find that others are complaining. *Abayisizawo* [failure to honour promise].”

Other conflicts relate to contractor and community. This can happen if the contractor employs many people some of them from outside their community. Social problems and crime may arise sparking off conflicts. For example, some employees may defile young girls and run

away leaving them pregnant. This is one of the reasons why contractors from outside the district are disliked. Sometimes they leave behind unpaid debts.

Generally, results indicate that disputes arising from formal contracts are often escalated due to breaches of informal contracts and are mitigated if there is mutual trust or social capital shared among the disputants. This notion is in line with Alder and Kwon (2003) reference to moderating effect of social capital. Below the discussion turns to preferred institutions to resolve disputes.

Preferred institutions for dispute resolution and contract enforcement

Construction contracts contain provisional clauses that are supposed to regulate implementation of a contract. In general, contracts are structured to protect owners or clients from opportunistic behaviour of contractors although as was pointed out in literature, clients can also exercise opportunistic behaviour. The performance bond, advance security, and retention money are all instruments to which a client can formerly invoke in case of specific breaches. These instruments, however, seem well suited for large contracts such as those undertaken at CG level with large and often international contractors and consulting firms. So what *actually* happens at the LG level in Uganda?

The study offers clear evidence that at the LG level, both contractors and LGs prefer informal ways of resolving disputes. One senior politician involved in construction business summed it; “All have sinned and fall short of God’s glory”.(Romans: 3:23) Literally meaning in the course of outsourcing construction projects each party involved in the process would have a case to answer resulting into a litigious process.

As was pointed out elsewhere, contracts may be allocated based on trying to achieve harmony or social justice in an LG area of jurisdiction and such firms may lack capacity to perform contracts efficiently. An engineer remarked

... you are aware that there is partly building capacity of those contractors... So, the way you supervise a person [firm], an international company is different from the way you are supervising this, because there you are capacity building and supervising at the same time ... at the end of the day you have a contractor but you are like you are the one doing the work yourself. Mix, this, mix that. Do this, do that...

An engineer of another district who was recommending a termination of a contract had to reconsider after he was overwhelmed by appeals from friends and relatives. "...the contractor went and talked to my mother and wife. Then our local priest came and talked to me. All of them were saying jobs are temporary and when it [job] is gone what will happen to you. You need these people. So, social restraints of this type of ties tend to preclude reliance on formal institutions. These are taking place every time there is a dispute to resolve.

Actors look up to influential politicians, cultural leaders or senior government bureaucrats for protection. A chairperson of a CC in a municipality who was an Assistant Town Clerk in charge of a municipal division as well remarked "...you see there are some influential people who can come to your help if you have problems on the job. They talk to the Town Clerk and to the chairman [Municipal]." People try to cultivate relations with their patrons or invest in social networks to which they resort or appeal to whenever they are in trouble or need favours. The trust in formal institutions is low. One district engineer who has since moved from a district LG to CG was self-congratulatory "...these jobs we are doing, one needs to build a future. I helped one man who had problems with a contract, today he is a Minister and he has to help me get a bigger job". Another district staff remarked "...our leaders come from among business people including contractors and one must handle them with care. You never know your next chairperson". There are social benefits for performing a public job in a certain way, just as there are personal costs of utilizing such social networks. In general, the costs for utilising social networks are low because such resources are generally available to any member whether one is in construction business or not (ibid).

In closely knit communities in rural districts or small municipalities, the common networks are extended family, clan, tribal, religious congregation, or such other primary groupings. The

same network of resources may actually have been utilised to secure a contract, or to be elected or appointed in a political or bureaucratic office, or indeed to be promoted into positions of authority in the district or municipality. The system is self-selecting and reproducing in some way to reinforce networks. So disregarding advice from leaders of these networks may prove very costly. As already pointed out it can attract unfavourable labels such as “uncooperative”, “not understanding”, “legalistic” which are derogatory, damaging to reputation, and depreciates social capital. By entering construction business, some extra efforts may have been put into investment to earn more capital that is of social nature.

These social restraints are not all binding and one can always ignore them and proceed with the formal process of dispute resolution. At LG level, it means a contractor can appeal to PPDA Authority or the IGG and sometimes go to court. This is likely if a contractor is from outside the district social networks and therefore not bound by social norms. An isolated case encountered by the researcher where local contractors had taken a district LG to court turned out to be a mere manoeuvre or ‘show litigation’ aimed at creating an emergency to aid AO to justify diversion of funds from other budget lines. The contracts were meant to be funded by a donor who withdrew leaving the district stuck with a debt. So, even this litigation that seemed to have broken ranks with existing social network was actually heavily linked to them.

Inter-institutional interaction and social capital and their influence

One of the research questions sought to explain how institutions interplay at the three levels of government – the CG, the LG level (meso) and the construction site; and why there are differences in behaviour of actors involved as a result of the interactions at these levels. The interactions are not just between formal and informal but also straddle different formal institutions e.g. related to construction standards and those related to formal procurement institutions.

Findings indicate that weak enforcement of construction rules and standards appear to affect the observance of formal adherence to outsourcing rules especially the post award of contract phase. This seems to be most prominent at the LG level. It is also at the LG level where unpredictable funding influences the operations more than they do at the CG level.

Results of the study indicate that at the LG level there are strong networks and dense interactions based on nucleus and extended families, clan and ethnic networks. Respondents reported that such networks are fungible as they can be used for multicity of roles. Their uses range from social security to aiding political campaigns by key members to being used to pursue economic opportunities. In the case of LGs, relatives of well-connected bidders stand higher chances to win an award of construction contracts because of those social ties.

Whereas these social ties may help an actor (member of network) gain contracts as part of social exchanges, the beneficiary contractor is also expected to reciprocate. These social relations seem so fungible that they interfere with the formal process of outsourcing. Strong social ties as they exist in rural LGs (rural districts) are not replicated at the CG level and some municipality authorities because of the cosmopolitan nature of the citizenry there.

Instead, at the CG level there are networks of different nature. In terms of social capital, whereas at the LG it is dominated by bonding type of social capital, at the central government level it is the bridging type of social capital based on relations such as alumni cohorts, professional colleagues and other rather weak or loose networks. One common element in social capital is trust and this trust can be used to undertake informal dealings, some which may be counter to formal rules (ABS 2000; Harper 2002).

Findings indicate that at the LG level formal rules may be subverted for a mixture of reasons, some purely for social exchange and others for immediate financial gains. This occurs throughout the process of outsourcing. At the CG level, the social network serves mainly for economic benefits, which may include money, scholarships to family members, and trips

abroad with shopping vouchers. Other gains may be bribes in kind like building materials deposited on their private construction sites including turnkey (completed) houses given to key actors in the award of contracts.

Other issues in outsourcing of construction projects

At the CG level, professionally manned consultancy firms which have been involved in the design of projects often carry out supervision of the same outsourced projects. However, in many LG the District engineer has a very high degree of control of the entire process of the outsourcing of construction projects. Often the district engineer designs and costs (cost estimate/bills of quantities) of the engineering projects if prescriptions are not from the central government. But even those estimates prescribed by CG are not necessarily respected. The engineer participates in evaluating bids after solicitation and is the supervisor of the contracts at the end. This dominant role in outsourced projects carries with it a wide range of discretionary powers including issuance of instructions to contractors, approving term payments and final approval of the outputs.

Findings indicate that many contractors at the local government level seek informal dealings with the District Engineers for purposes of business expedience. In addition, local politicians seeking to undertake influence peddling including pushing for their proxy construction firms use the district engineer for this purpose. Client and contractor often doubly employ engineers. While formally employed by the local authorities, district engineers are often employed by contractors as their supervising engineers informally. One contractor explained that even in the case of bribes to the CAOs, the District Chairman and other key members of the LGs, the District Engineer may coordinate the entire sharing of the bribes –acts like a computer ‘server’ on a local area network (LAN).

7.6 Summary of the chapter

The *ex post* contract award phase of outsourcing construction projects further demonstrates

the actors' choices of institutions at different levels of government. The analysis of data collected reveals that there is an overall inclination towards use of informal institutions in the construction business in Uganda although it is most remarkable at the LG level.

The chapter aimed at explaining why certain type(s) of institution(s) are preferred and how institutions interact to influence post-award phase of outsourcing of construction projects.

Key findings include the following:

1. Three categories of rules and coordination mechanisms exist namely; a) those related to procurement in general, b) those related to construction management, and c) private ordering of professionals and firms. Together, these rules/mechanisms form part of general business and bureaucratic environment in the country. In each category, one finds both formal and informal institutions.

The findings indicate that at CG level, actors generally prefer formal institutions in their transactions, whereby contractors preferring to wait for consultants' instructions to commence work, or contractors writing letters of reminder if claims are not paid promptly. This adherence to formal procedures and respect for formal structures is most remarkable in large and complex projects where actors are highly specialised in various fields of engineering, architecture, quantity surveying, finance and procurement. Some of these actors have international experience, which some respondents called the 'formalising' factor. The international actors such as foreign firms and donor agencies tend to put their local counterparts on pedestal. It is argued that such actors prefer to complete projects in time and earn a clean certificate of completion for their future business, accountability to their organisational headquarters which may not necessarily be in Uganda.

It was also observed that actors at the CG level are highly aware of both the procurement related laws and regulations as well as the construction related statutes and regulations. In

addition, due to the high costs involved if an actor did not adhere to formal rules, contractors at CG level tend to prefer them [formal] in managing their contracts. The cost of delayed payment to a contractor can be accumulated bank interest, or failure to adhere to building codes could bring a high-rise building tumbling down. The contract forms also tend to have reliable self-regulating safeguards such as a performance bond. A client can execute such a bond in case of non-performance, or a consulting engineer's practicing licence can be cancelled for failure to supervise adequately. Because of the high visibility of large projects, the media also tends to be vigilant on reporting on the progress of these projects. However, in situations where actors that share close ties are involved, such as when all actors are Ugandans, there is a tendency to shift towards informality; which gets more significant at the LG level.

At the LG level, almost every transaction in contract management revolves around the district engineer who has to issue instructions for work to commence, interim payment certificates, or certificate of completion for final payment. Such wide ranging discretionary powers vested in one field official frontline actor coupled with dense primary social networks of family, clan, tribe, religious groups render the LG performance of contracts more informal.

While from the viewpoint of formal institutional frame of mind one could describe contract management at LG as 'messy' or disorderly; based on informal institutions and trust among certain social groups, an explicable pattern of behaviour emerges. Engineers who have to juggle several roles especially if they hail from the local community, can only "... do what they can" (Brodkin, 2000:p9) especially in the face of low generalised trust in public institutions and 'strong bonds' of solidarity. The result is formal contracts are preferred less and many disputes may emerge but no formal procedures taken. Issues are 'sorted out locally' as the saying goes in Uganda. There is a high preference for informal dispute resolution

among actors fearing to take on formal procedures that lead to loss of control by all and yields adversity that erodes social capital.

Finally, findings indicate that at the LG level, formal rules may be subverted by actors for a mixture of reasons, some purely for social exchange and others for immediate financial gains (bribes). This takes place throughout the process of post-award phase of outsourcing and the specific leverage points include the following

- a) A firm awarded a contract choosing subletting it to another informally
- b) A client manipulating payment payments to enforce any informal agreements related to the formal contract
- c) Works performed as per specifications in the contract or adjusted either formally or informally
- d) A project monitored and supervised as per PPDA guidelines and regulations or performed on *ad hoc* basis.

These leverage points are more likely to be manipulated at the LG more than at the CG level for both economic and social benefits. At the CG level, the social networks appeared more focused on economic benefits.

CHAPTER EIGHT

CONCLUSIONS: *PROCLIVITY OF PUBLIC CONSTRUCTION PROJECTS TO INFORMALITY*

8.1 Introduction

Uganda's agenda for public sector procurement reforms in general and outsourcing in particular, have clearly been informed by market-type solutions prescribed under neoclassic tradition; and in particular NPM reforms pursued globally over the last twenty five years or so. The Uganda's case has provided data to suggest an incomplete shift towards the model that prioritises competition and marketing approaches as a means to improve efficiency and effectiveness of the public sector. The study also raises questions about the appropriateness of a global policy instrument of public sector outsourcing and its application to various national contexts and at the respective levels of governance therein. This concluding chapter, amplifies these issues beginning with a summary of the work reported in this thesis by revisiting the research problem and questions outlined in chapter one, so as to reflect on the contributions made; followed by suggestions for further research arising from the study.

The chapter contains six sections. After the introductory section (8.1), the next section 8.2 is a summary of propositions and questions derived from chapters (1-4) leading to section 8.3 findings and conclusions from the field (chapters 5-7) which answer the research questions. With the findings, section 8.4 presents contribution of the thesis to the current state of knowledge; while 8.5 outlines delimitations and implications for further research. Section 8.6 sets out this thesis's implications for policy and practice in public sector outsourcing of construction projects.

8.2 Summary of propositions and questions

Experiential puzzlement with development programmes pointed out in the background to chapter one (page 1), kindled this study and subsequently a central proposition (page 12) that a mix of formal and informal institutions influences construction projects differently from

context to context including at various levels of government. It was predicted that informal institutions were likely to influence the process of public sector outsourcing more at the LG level than at the CG level due to perceived higher transaction costs of using third-party contract enforcement associated with formal institutions by actors at LGs. Arising from the proposition, the main questions of the research were 1) why and how are actors' decisions influenced by institutions in the outsourcing process in Uganda? 2) Which types of institution(s) are *actually* preferred in enforcement of formal contracts in outsourcing process of construction projects in Uganda and why; and 3) How do institutions and social capital interact to influence outsourcing of construction projects and why?

The proposition together with the research questions were built on extant literature reviewed in chapters two and three. In these two chapters, the study explained why results from public sector outsourcing in various contexts vary. Based on institutional theory, it was argued that two regimes of institutions influence human action. The formal regime aims to regulate excesses of the informal regime in a chosen area of public policy action such as outsourcing. However, how the two regimes *actually* interact in a given specific context remains an empirical question. It is further argued in the literature that actors' preference of an institutional regime is dependent on their appraisal of transaction costs in a given social context (Rickett, 2008). The thesis agrees partly with this argument but points out that the scope (bonding, bridging, and linking) of social capital plays a mediating influence on the actors' preference of institutions. It was therefore concluded (page 54) that actors' rationality is plural bracketing in not only material costs and benefits but also social ones challenging the neoclassic assumptions. Actors will exercise some form of 'forum shopping' between formal and informal institutions (pages 109) preferring a mix that leads to maximum net utility. In addition to scope of social capital, characteristics (asset or non-asset specificity) of economic transactions influence choice of governance structure. The argument of this thesis is mainly developed from this integrative framework of institutional theory and social capital streams of

literature which has previously been treated as disparate and not applied to a specific sub-sector such as public construction projects in a developing country such as Uganda.

Drawing on the case study approach, the thesis uses this integrative framework (page 104) to develop research methods and data collection tools in chapter four. The methods are mainly qualitative with a variety of evidence from interviews, documents, observations and secondary sources. These methods and approaches to data collection enabled the assembly of evidence from the case of Uganda. The key findings and conclusions from the case study are distilled as follows according to the research questions.

8.3 Findings and conclusions

8.3.1 Why and how are actors' decisions influenced by institutions in the outsourcing process in Uganda?

The first aim of the thesis was to analytically investigate the process of outsourcing public construction projects and how this process is influenced by institutions and why. The findings from case of Uganda according to outsourcing stages/phases are shown below:

Finding 1: The national planning process generally adheres more to the formal guidelines in the national strategic phase of outsourcing process but is less formal in identification and selection of specific construction projects.

At CG level, particularly at the MoFPED, a coalition of donor agencies' and GoU's bureaucrats has been evolving over the last 20 or so years during which Uganda has enjoyed favourable funding. This coalition guided by formal guidelines rather than individuals seem to be the major influence on national planning. Whereas extensive consultations may be undertaken with LGs, the consultations appear to be used mainly to help in implementation process rather than revise what may already have been arrived at by the coalition (page 167). The apparent adherence to formal institutions is in line with expectations of how government should work although it conceals the informal understanding within donor-government bureaucratic coalition that actually lead to formulation of these formal guidelines. This finding is consistent with Amis (2002) as discussed in chapter five.

Identification of programmes and projects to operationalise the broad national and sector plans, are similarly influenced by the same coalition of bureaucrats and donors. However, within the broad formal national plans, individuals informally influence the identification and selection of projects within sectors due to direct benefits that individuals may pursue. Both the broad planning, and programme/project identification, is carried out mainly at the central government level. Little, if any, is undertaken at LG level.

At the LG there is limited strategic planning undertaken (page 169) since it is assumed that they participated in development of national plans. While the law gives autonomy to LGs to develop their own plans, the nature of funding constrains them to administering centrally developed and funded plans. This is in spite of a constitutional provision for an independent National Planning Authority (NPA) and LG councils as area-based planning authorities. In practice, the MFPED has been leading the planning process.

Finding 2: The institutional regime influencing project design to award of contracts at central government level is generally formal and more informal at the LG level.

Design and specification stages

Design and specification of construction projects at CG level are generally undertaken by outsourced consultants while at LG level their in-house engineers play this role. Rarely are consultants hired at the LG level mainly because few projects are initiated and funded solely by the LGs except for office blocks seen in some districts. Both Ugandan and foreign registered consultancy firms participate in the marketplace although local firms tended to dominate the smaller sized and less complex projects while expatriate firms dominate larger and more complex projects. Generally, design and specification follows formal procedures as detailed in the relevant laws and regulations.

Due in part to the differences in size of projects undertaken at the central and LGs, the type and number of actors directly involved in the outsourcing processes differ. At central

government level, the hiring of consultants allows for separation of functions between design and supervision of construction works. At LG there tends to be a fusion of roles between design and supervision. The LG engineer combines both roles. Firms contracted at the central government tend to be large and some international, while at the LG level, firms are generally small and owned by local entrepreneurs.

Solicitation stage

At both levels of government, formal regulations and guidelines are actually adhered to in soliciting for bids (page .230). Generally, open invitation for bids is undertaken either directly or through a stage of pre-qualification depending on the formal guidelines appropriate to financial thresholds.

Source selection and award of contracts stages

Evidence suggests that solicitation, evaluation and award of contracts appear to be largely influenced by formal institutions at the CG level. This seems to be particularly so in large and complex projects especially where donors are involved in issuing 'no objection' (page 2010) as the process progresses from one stage to another. However, small projects where donors are rarely directly involved tend to be influenced more by informal institutions mainly due to social ties among actors. Nonetheless, unlike at the LG level, the firms that win contracts are not biased to a particular physical location indicating that perhaps competitive or bridging social capital rather than bonding social capital mediates the processes.

At LG level, processes are largely influenced by informal institutions. It appears that the dense networks pre-existing in an area are reproduced in the LG system and therefore influence solicitation, source selection and contract award. Reciprocity expected among people bonded together by these strong social ties includes award of contracts. There are high social benefits or costs for conformity and non-conformity respectively that tend to outstrip what is expected from adherence to formal guidelines *per se*. The informal dealings generally

exclude firms owned by entrepreneurs who are not connected to local networks. Evidence analysed in chapter six indicate that actors at LG tend to be more embedded socially which led to ‘market failure’ in a sense that competition and free information flow assumed by the neoclassic policy reforms have not been realised so far. It also appears that the same situation of market failure pertains at the central government level except that generally on ‘paper’ they appear to comply with formal rules.

These findings on processes that lead to award of contracts are a departure from literature (Barrie and Paulson’ 1992; Winch, 2002) especially on outsourcing in OECD countries. Such literature has tended to treat public sector outsourcing of construction projects without explicit recognition of differences due project size, complexity and funding patterns at different levels of government for developing countries.

8.3.2 Which types of institution(s) are *actually* preferred in enforcement of formal contracts in outsourcing process of construction projects in Uganda and why?

Through soliciting views on contract enforcement and preferred methods of dispute resolution, the second aim of the thesis was to analyse institutions *actually* preferred in enforcement of construction contracts.

Finding 3: There is a general preference for informal institutions to enforce outsourced construction contracts for both central and local governments.

Findings revealed that governmental actors in Uganda generally prefer to use informal mechanisms and rarely use formal ones to try to enforce construction contracts. This is contrary to the notion that they are the custodians of formal guidelines. Variations among contractors, however, seem to exist based on the size and complexity of projects. Processes related to large and complex projects tend to have more *apparent* compliance with formal institutions and those with small and less complex projects to conform to informal institutions.

This enforcement pattern seems to point to two main factors of project size and type of participants in the contract management as discussed in chapter seven. Large and complex projects attract contractors who have a higher preference for formal rules especially to enforce speedy payments. The financial imperatives associated with large construction projects override social capital benefits. These large projects generally require a contractor to take a loan, secure a large performance bond or advance guarantee that have high interest rates. So the transaction cost of failure can have a heavy toll on the firm. Based on this possibility of loss, large contractors tend to prefer formal institutions. In addition, large and complex projects usually have the participation of donors and consultants in contract performance monitoring, which tends to keep processes as close as possible to contractual prescriptions including adherence to formal procedures. The large number of specialists as project managers, accountants, engineers, lawyers employed by such large firms to manage contracts tends to drive transactions to emphasise formality (page 242).

In the small and usually numerous construction projects, disputes rarely involve formal procedures of litigation, arbitration, appeals to IGG or PPDA Authority. All actors in small projects attributed this to the high cost of complying with these formal procedures and possible loss of control over the processes. While with large projects transaction costs can be more than offset by the large budgets associated with large projects, with small projects the cost of formal processes are prohibitively high in both material and social terms leading actors to exercise forum shopping (page 188). These findings are in partial agreement with Watson, *et al.*, (2005) plural rationality, except empirical evidence explicitly recognised social capital considerations that are important at the LG level. Parallel informal considerations that flank formal ones tend to blunt efficiency and effectiveness of enforcement of formal contracts. This type of interplay of formal and informal institutions is prominent where actors belong to the same social circuit.

8.3.3 How do institutions and social capital interact to influence outsourcing of construction projects and why?

By examining the nature and pattern of interaction between formal and informal institutions in outsourcing of construction projects and how institutions and social capital interact in outsourcing process of construction projects, the third aim of the thesis was to analyze consequences of interaction amongst institutions and between social capital at two levels (central and local) of government.

The findings from examining the outsourcing process are below.

Finding 4: The interplay of formal and informal institutions tend to weaken enforcement of formal institutions at LG level due to strong bonding social ties.

Analysis chapters (5-7) indicate that weak enforcement of construction rules and standards appear to affect adherence to formal outsourcing rules especially the post-award of contract phase. This tends to be most predominant at the LG level where a mix of strong social ties and relatively weak reach of state power (Bhadarn, 2001) conspire to weaken enforcement of formal institutions. It is also at the LG level where unpredictable funding influences the operations more than they do at the central government level.

In addition, other formal government policies have influence on the outsourcing process. For example, as pointed out in chapter seven, the policy of *bona bagaggawale* has been re-interpreted to mean awarding contracts to local contractors so that they can also prosper without due regard in most instances to the concept of fair competition, value for money and transparency. Similarly, the affirmative policies in favour of women and disabled peoples have been abused to allocate contracts that should have been subjected to competition. This may actually be used to allocate a contract to a politician but using the disadvantaged groups as proxy names. These instances of institutional conversions are common when there is weak enforcement of the formal rules. Other institutional interactions are between formal and informal institutions where actors tend to exercise forum shopping.

Results of the study indicate that at the LG level there are strong networks and dense interactions based on nucleus and extended families, clan and ethnic networks. Respondents reported that such networks can be used by actors for multipurpose ranging from political campaigns to pursuing economic opportunities. In the case of LGs, local politicians, bureaucrats and others well connected to them tend to win contract awards of construction contracts because of those social ties.

Whereas these social ties may help an actor (member of network) gain contracts as part of social exchanges, the beneficiary contractor is also expected to reciprocate. These social relations seem so fungible that they interfere with the formal process of outsourcing. Strong social ties as they exist in rural LGs are not replicated at the central government level and some municipality local authorities because of the cosmopolitan nature of the citizenry there.

Instead at the CG level, networks are of different nature. In terms of social capital, whereas at the LG it is dominated by bonding type of social capital, at the CG level it is the bridging and linking types of social capital based on such connections as alumni cohorts, professional colleagues, similar regions of origin and other rather weak or loose networks. One common element in social capital is trust and this trust can be used to undertake informal dealings, some which may be counter to formal rules.

Findings indicate that at the LG level, formal rules may be subverted for a mixture of reasons, some purely for social exchange and others for immediate material gains. This takes place throughout the process of outsourcing. These findings confirm plural rationality (Vatn, 2007) but go a step further to identify possible trajectories of decision-making by actors in an outsourcing process of construction projects. The strength of social ties and the scope of social capital interact with institutions in such a way that the stronger the ties among actors the more inclination to informal institutional regime and the weaker the ties the higher proclivity for formal institutional regime.

Finding 5: The formal rules and organisations supposed to regulate outsourcing of public construction projects in Uganda are probably the most comprehensive in Africa although in general, it appears informal rules and organisations seem to reign over the formal ones.

Formal rules that are enforced such as developing pre-qualified lists of contractors, constituting evaluation and contracts committees, including establishment of PDUs are well institutionalised as decision centres regarding outsourcing of public construction projects.

However, hard to detect violations of formal rules such as allocation of contracts instead of competitive bidding is not fully institutionalised. Informal institutions appear to be preferred in decision-making. Proclivity for informality at the CG and LG levels appear to be the same. Differences at these two levels include:

At the CG level formal institutions are mostly preferred and informality concentrated in the pre-contract period and mainly for extraction of rents (financial, material, scholarships, and foreign trips to Europe, America or South Africa). Recently the President of Uganda while in Germany requested the Germany Government to arrest such government officials on such trips (*The New Vision* June 2009).

At LG level, a mixture of investment into social capital (future gains, public relations/goodwill, and reciprocity) and extraction of rents (commissions, use of company names, proxy firms etc) are practiced. At LG, the informal dealings seem to be continuous, occurring throughout the outsourcing cycle.

The research findings concur with the role played by institutions in development work where informal institutions continue to influence formally constituted processes. The function of social capital is also well demonstrated but what appears surprising is that there seems to be no differences in the behaviour of actors at both local and central government levels. One would have expected that the presence of oversight agencies at the CG level and the density of the media and civil society coverage would constrain tendencies to informal practices. It is

noteworthy that an appearance of high adherence to formal rules assessed in terms of auditable paper work for compliance by the regulator (IGG) and Auditor General's office may be misleading as chapters 5-7 revealed.

Generally, there is a sort of moral crisis among government actors and no one would easily find moral grounds to rush to formal mechanisms to enforce contracts. Contractors reported that a mere threat to take up formal mechanisms makes government clients to come to negotiating table although threats by contractors are infrequent for fear of being excluded.

The differences between institutional regimes *actually* influencing projects at central and LG levels can be attributed to the participation of international actors like donors, consultants, and construction firms. Where they are absent, there seems to be no remarkable differences.

8.4 Contribution to the current state of knowledge

The study has contributed to further understanding of influence of institutions in policy reform implementation, nature and pattern of interaction between institutions and social capital in public sector outsourcing of construction projects and made methodological contribution to research on influence of institutions in outsourcing.

First, with respect to understanding of influence of institutions in policy reform implementation, as discussed in Chapter 2, two perspectives of institutions were identified: the *narrow perspective* led by North (1984, 1990) that defines institutions as 'rules of the game' and organisations as player in the game (see section 2.2.); and a *broad view* of institutions as 'both rules of the game and organisations that facilitate in coordination of human behaviour' (World Bank, 2003:p38, Coriat and Dosi, 2002; Grief, 2006). The empirical evidence from this study supports the later view in which organisations are recognised as institutions. For example, the PDE, evaluation committees, CCs, PDUs and PPDA Authority can now be referred to as institutions in the public sector outsourcing

process since the actual rules within these organisations/units influence the outsourcing process just like the regulations and guidelines according to the PPDA Act or building codes. The professional associations such UNABCEC and UIPE are other institutions that influence public sector outsourcing of construction projects through their advocacy role in the construction industry.

Secondly, the thesis dimensionalises both institutions and social capital in order to operationalise them and build an analytical framework that could restructure future study on the influence of institutions in outsourcing of public construction projects in developing countries. Institutions are dimensionalised into *structural*, *procedural*, and *behavioural* (see section 2.2) and social capital into *scope*, *forms*, and *channels* of social capital (see section 2.6). Based on dimensions of these two concepts, the analytical framework in chapter 4 integrates two streams of literature that have hitherto been disparately employed to study their influence in policy reform implementation. By integrating them, the conceptualisation framework could apply plural rationality to actors' decision making in outsourcing process of construction projects. Transaction cost analysis at two levels of government was operationalised and contributes to proper understanding of the interaction amongst institutions and with social capital. The structural dimension identified as common to both institutions and social capital offers a clearer understanding than is present in the extant literature concerning these two constructs. The contribution of the thesis is in providing an approach in analysing how and why institutions influence construction projects and applying this integrative approach to analysis of the case of Uganda at the central and LG levels.

Through pointing out the explanations for variations from context to context, the thesis challenges the argument that privileges singular rationality albeit bounded, to recognise that there is a case for plural rationality in public sector outsourcing of construction projects.

Public actors can simultaneously pursue material gains as well as social praises while trying to minimise their transaction costs.

Thirdly, the thesis has unveiled the fallacy of compliance checks by the procurement regulator that prioritises audit checks of PPDA guidelines as a proxy for measurement of achievement of value for money. A seemingly competitive process does not automatically guarantee ‘getting prices’ right nor *actual* performance of outsourcing process as envisaged by the framers of public sector procurement reforms in general and Uganda public sector outsourcing in particular.

Fourthly, the separation of powers, shuffling of appointing authorities for various organs of procurement entity including withdrawing powers of appointing CAOs and Town Clerks and their deputies from LGs may not be a remedy to the tenacity of informal institutions. The persistence of informal institutions is facilitated by contexts and their various strengths of social ties that pre-exist reforms or arise from social relations facilitated by social structure in outsourcing of construction projects. Actual change depends on transformation of the social structure on which institutions and social capital arise.

Fifthly, this thesis has also made methodological contribution to research on the influence of institutions in public sector outsourcing of construction projects. Most empirical studies related to influence of institutions employ quantitative or qualitative or mixed methods which may fail to provide sufficient in-depth understanding of a phenomenon. The statistical method attempts to define causal effects in terms of expected value of the change in outcomes when in theory only one independent variable changes. This may explain extent of influence of institutions and bring width to understanding of a phenomenon but little depth and explanation on why.

While in general, a qualitative study adds depth, a *single instrumental case study design* with *embedded units* of analysis employing *process-tracing* as used in this study fills a methodological gap in institutional literature (Yin, 2003). An embedded case study design which does not only focus on the holistic view of the case but is also sensitive to the phenomenon operational detail that traces the process *causal mechanism*, adds depth in analysis to answer the *why* and *how* questions such as for this study. As pointed out in chapter 4, within-case analysis also helps to explain the decision process and behaviour of various actors in the process chain of events and *how* both actors and structures matter in terms of interactions among actors; actors and their social aggregates to uncover what stimuli the actors attend to (George and Timothy, 1985). By selecting Uganda as a revelatory case on which a variety of evidence from interviews, documents and observations was collected to answer questions on outsourcing *process*, this thesis has not only provided more complete picture of why and how institutions influence the process, but also filled a methodological gap in institutional and social capital literature. The in-case comparison has enriched understanding of how a global phenomenon like outsourcing could vary not only from country to country but within countries.

8.5 Delimitations and future avenues for research

This section points out delimitations of study and rationale for future research on influence of institutions.

Despite being able to address the questions with which this study set out, there are limitations that are worth pointing out to the reader. It has to be recognised that in addition to difficulties encountered during the conduct of this research, the research approach itself had its inherent limitations. Both these sets of limitations are pointed out here and should be taken into account for future research.

First, one limitation of the research is that influence of institutions is a dynamic process and change tends to be long term. In addition, I used a single albeit revelatory case study and a cross-sectional design. Two or more cases, and repeated at an interval of about five years or so could improve understanding. This longitudinal perspective would add new insights as procurement reforms are less than ten years and still evolving.

Secondly, the sample of interviewees was biased towards local government as many actors at the central government level were too busy to be interviewed due to the preparations to host the Commonwealth Heads of Government that was underway.

Finally, having completed the analysis of the study and realised the importance of *leadership* theories and *capacity* issues in setting the climate for formality or informality, it was belatedly felt that more attention should have been paid to the empirical investigation of these two phenomenon.

Areas for further research

The findings should be understood within the constraints of limited study where four districts, two municipal authorities and four central government ministries were covered. A more extensive study, reaped at different times, may be using survey methods, could bring new insights.

Implications of this research are that attention should be paid to informal institutions in the design of policies. In addition, care must be taken to study possible interactions and institutional conversion even among formal institutions.

First, although classification of services along two transaction cost dimensions is consistent with the extant contracting literature, it still requires further empirical scrutiny. Studies along these lines should focus on how transaction cost considerations influence governments' decisions, about whether to contract, how contracts are managed, and whether the contracts

are performed successfully. There is an emerging concern at the LG level as to whether outsourcing should be promoted at all if the government engineer ends up doing most of the work. This is often accompanied by use of government equipment. The question being asked is whether it is worth the effort and money to undertake a rigorous outsourcing process.

Second, asset specificity and ease of measurement are clearly not the only factors influencing these three questions nor is social capital computations. The methods of social capital measurement are not well developed and therefore future research may need to pay attention to more refined way of measuring social capital. Although transaction costs clearly need to be included in any complete account of public sector outsourcing of construction projects, it is clear that market structures, service delivery networks, and trust and experience among governments and contractors also influence contracting.

8.6 Policy implications

This study has made a contribution to understanding influence of institutions in public sector outsourcing and further provides insight into how actors rationalise their choices in pre-contract, contract award, and post contract award phases of the outsourcing process of public construction projects in Uganda. The findings point to increasing inclination to informal institutions in the process of public procurement against the prescriptions of the law and principles of sound procurement. To compound the problem, compliance checks by the regulator, PPDA Authority, and other oversight agencies tend to rely mainly on official records. Many of the informal institutions which influence outsourcing process are not particularly complementary to formal ones and therefore results of compliance checks may be misleading. The study also revealed that the nature of funding by GoU treasury especially for LG and their social embeddedness, encourage inclination to informal institutions in order to deliver services as per their plans.

The policy implications are that institutions do really matter, including social capital considerations; and those who design policies must be aware and understand their influence in policy implementation. Policy makers and oversight actors should not be over enthusiastic about orthodox neoclassic recommendations and devise policy instruments that take full cognisance of social-political context.

In the case of outsourcing construction projects, the implementation has to contend with the general business environment, the political climate of non-stop creation of districts, general procurement reforms, and the dynamics of construction as a trade. The policy has concentrated on construction as a business and outsourcing as a mere procurement process. Policy analysis should look again, treat outsourcing construction projects as unique, and set up a separate regulator for construction industry, which would move the emphasis away from compliance with the procurement law to value for money for the construction industry.

A regulator for the Ugandan construction industry should be established to play similar roles like the Tanzania National Construction Council (TNCC) which is a government institution established through Act of Parliament in 1979 or the South African Construction Industry Development Board (CIDB), a national body established by an Act of Parliament in 2000. These bodies have played significant roles in improved performance of their respective construction sectors. While the Tanzanian NCC main thrust is to promote internationally competitive local construction industry for socio-economic development; the South African CIDB focuses on promotion of common and ethical standards for construction delivery and contracts. A Uganda construction regulatory body would focus on objectives among others to deliver quality built assets cost-effectively but taking cognisance of social objectives such as; targeted procurement strategic and practical needs of its citizens in terms of increased equal employment opportunities as the construction sector is a large spender of public funds. Lastly, private governance institutions such as Uganda National Association of Building and Civil

Engineering Contractors, Uganda Association of Consulting Engineers and other professional bodies should be supported so that they undertake self-regulation for improved sector performance.

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Appendix 1

13th September 2007

UNIVERSITY OF
BIRMINGHAM

International Development
Department (IDD)

School of Public Policy

To whom it may concern

This is to certify that Mr Sylvester Kugonza is registered for the PhD in International Development. He is registered within the International Development Department, his minimum registration is until the 30th of September 2008.

Mr Kugonza will be undertaking field work in Uganda for his PhD thesis which the title is "Public Sector Outsourcing: The Functions of Institutions in Construction Projects". If you could assist him in anyway we would appreciate your assistance. Thanking you in advance for your help in this matter.

Please do not hesitate to contact me if you require further assistance or information.

Yours faithfully


Mrs Debra Beard
Postgraduate Administrator
International Development Department

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Your Ref:

Our Ref: **CG/49**

TO WHOM IT MAY CONCERN

PHD RESEARCH IN PUBLIC POLICY FOR MR. S. KUGONZA

This is to introduce to you Mr. Kugonza Sylvester who is a staff at Uganda Management Institute currently pursuing PhD at International Development Department (IDD) of University of Birmingham, U.K. His PhD research title is "**Public Sector Outsourcing: The Functions of Institutions in Construction Projects in Uganda**". He has reached a stage of data collection

The purpose of this letter is to formally request you to allow him to access relevant information in your custody/organization including conducting interviews for the research.

Any assistance rendered to him will be highly appreciated.



Dr. J Kiyaga Nsubuga
DIRECTOR GENERAL
20/09/2007

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Appendix 2

Research Instruments

a) Interview Questions to answer the research questions

Central research question:

Why and how do institutions influence the process of outsourcing public construction projects in Uganda?”

Sub questions:

1. Why and how are actors' decisions influenced by institutions in the outsourcing process in Uganda?
2. Which types of institution(s) are actually preferred in enforcement of formal contracts in outsourced construction projects in Uganda and why?
3. How do institutions (formal/informal) and social capital interact to influence outsourcing of construction projects and why?
 - a. What is the nature and pattern of interaction between formal and informal institutions in outsourcing of construction projects
 - b. How do institutions and social capital interact in outsourcing process of construction projects?
 - c. Why do consequences of interaction of institutions and social differ within space and time?

Detailed interview guide questions on next page

Research question	Interview questions/topics
1. How and why institutions influence planning, design and award of construction project contracts?	
<ul style="list-style-type: none"> ▪ What institutions are actually involved in the planning and design of construction project contracts? 	<p>What structures, procedures, behaviours (formal and informal) did you observe in planning and design of construction projects?</p> <ul style="list-style-type: none"> a) Formal rules, structures b) Informal rules and structures
<ul style="list-style-type: none"> ▪ How are decisions influenced by institutions in the outsourcing process? 	<p>Outline of outsourcing process</p> <ul style="list-style-type: none"> 7. Decision making process –solicitation, receiving, evaluation, award, communication of award, acceptance process, commencement, completion 8. Supervision, issuance of certificate of completion
<ul style="list-style-type: none"> ▪ Why one type of institution (formal or informal) may be more effective in decisions to award construction project contracts? 	<p>Formal and informal structures, procedures, behaviours, conventions that emerged, which was more important, at what stage and why/</p>
2. Which type of institution(s) is preferred to enforce contracts in outsourced construction projects and why?	
<ul style="list-style-type: none"> 1. -enforcement, does it happen, how effective, does it take formal or informal process? Why? 	
3. How do formal and informal institutions interact to influence construction projects?	
<ul style="list-style-type: none"> 2. Are there ways in which both formal and informal institutions are used simultaneously/ How does this happen? 	

b) Interview guide for semi-structured interviews with entrepreneurs

I. General information

1. How long have you been associated with public procurement and construction projects in particular?
2. What size of construction projects have you been involved?
3. What stage of the project do you get involved?
4. What level of government have been the sponsors of the construction projects—local or central government?

II. Institutions and construction projects

What formal and informal institutions affect construction projects right from when an idea is conceived up to when a project is completed?

How do these institutions affect: <ul style="list-style-type: none">• Conception• Design• Solicitation• Award• Administration	What role do informal rules play alongside the formal rules at the stages? <ul style="list-style-type: none">• Conception• Design• Solicitation• Award• Administration
---	--

What is your view about building informal relationships with decision makers in the government entity?

How do you make a deal with the contractor-*sole proprietor, large companies*? How do you make a deal with the government entity?

To what extent do you rely on formal or informal contracts in business transactions?

What role do professional associations and their standards play? E.g. CIPs, Association of professional engineers?

What role do local government associations play?

What is your opinion on the effect various trainings on how such procurement chain is managed?

III. Institutions and decision-making

What are the most common types of contracts entered with contractors? E.g. fixed price or any other

How is contractor who is based outside the district viewed if he/her wins a contract in another district?

Who are normally responsible for contract supervision and monitoring?

What is the extent to which the informal rules are actually enforced?

How are contracts enforced administratively, legally or socially?

Of formal and informal institutions enforced most?

What benefits would a party derive by adhering to informal contracts?

IV. Institutions and dispute resolutions

What is your view of enforcing a contract between your firm and the government?

What is your view about enforcing a contract through court?

Have you ever heard a dispute in construction contract?

What are main reasons for violation of contractual terms or disputes in transaction?

How many of dispute cases have you had in the past five (5) years?

What do you usually do when disputes arise? What methods have you used to settle these disputes?

How many cases have you taken to course?

V. Interplay of institutions (formal and informal)

VI. What is your opinion on the effectiveness of formal institutions at the central government as compared to their effectiveness at the local government level?

To what extent is formal political supervision done at the central government?

To what extent is technical supervision undertaken at the central government levels?

VI. What is your opinion on the effectiveness of informal institutions at the central government as compared to their effectiveness at the local government level?

To extent is political supervision undertaken at local government level?

To what extent is technical supervision undertaken at the local government level?

Appendix 3

Project complexity and level of risk model

Complexity Dimensions	Project Profile		
	Small Independent Low Risk	Medium Moderately Complex Some Risk	Large Highly Complex Significant Risk
1. Time/Cost	<3 months <\$250K	3-6 months	>6 months >\$750K
2. Team Size	3-4 team members	5-10 team members	>10 team members
3. Team Composition	Team staffed internally	Team staffed with some internal and some external resources	Complex team structure, e.g. contractor teams, virtual teams, culturally diverse teams, outsourced teams
4. Competing Demands	Schedule, budget and scope are flexible	Schedule, budget, scope can undergo minor variations, but deadlines are firm	Deadline is fixed and cannot be changed; schedule, budget, scope, quality have no room for flexibility
5. Problem/Solution Clarity	Easily understood problem and solution, solution is readily achievable using existing <i>technologies</i>	Either problem is difficult to understand, the solution is unclear or difficult to achieve, or the <i>technology</i> is new to the organisation	Both problem and solution are difficult to define or understood, solution is difficult to achieve, and solution likely to be using unproven or complex <i>technologies</i>
6. Stability of Requirement	Requirements understood, straight forward, and stable	Requirements understood but expected to change	Requirements are poorly understood and largely undefined
7. Strategic Importance 8. Political Implications 9. Multiple Stakeholders	No political implications	Some direct mission impact, minor political implications, 2-3 stakeholder groups	Affects core mission and has major political implications, visible at highest levels of the organisation, multiple stakeholder groups with conflicting expectations
10. Level of Change	Impacts on a single business unit	Impacts a number of business units	Large-scale organisational change that impacts enterprise, spans functional groups or agencies, shifts or transforms the organisation

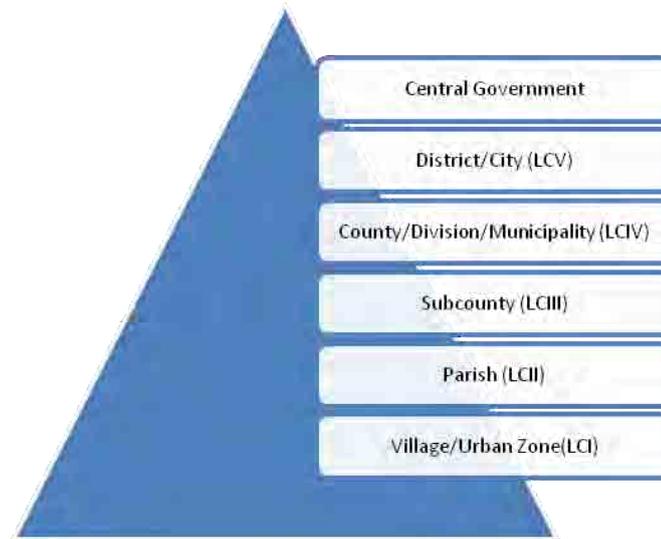
Source: Hass 2007

APPENDIX 4: List of Interviewees by Designation

No.	Designation
1.	Former Minister of Local Government
2	Directors in Central Government Ministries
3.	Directors in PPDA Authority
4.	Under Secretaries
5.	Commissioners
6.	District Chief Administrative Officers
7.	Town Clerks
8..	Central Government Engineers
9.	Local Government Engineers
10..	Chief Executives of Construction Firms
11.	Chief Executives of Consulting Firms
12..	Business managers of International Construction Firms
13..	Proprietors of Construction firms
14.	Local Government Politicians
15..	Heads of Procurement Units (PDU)
17	Architects from Consulting firms
18.	A Leader of Civil Society Organisations
19.	Secretaries of Contracts Committees
20	Members of Contracts Committees
21.	Members of Professional Associations within construction industry

Appendix 5

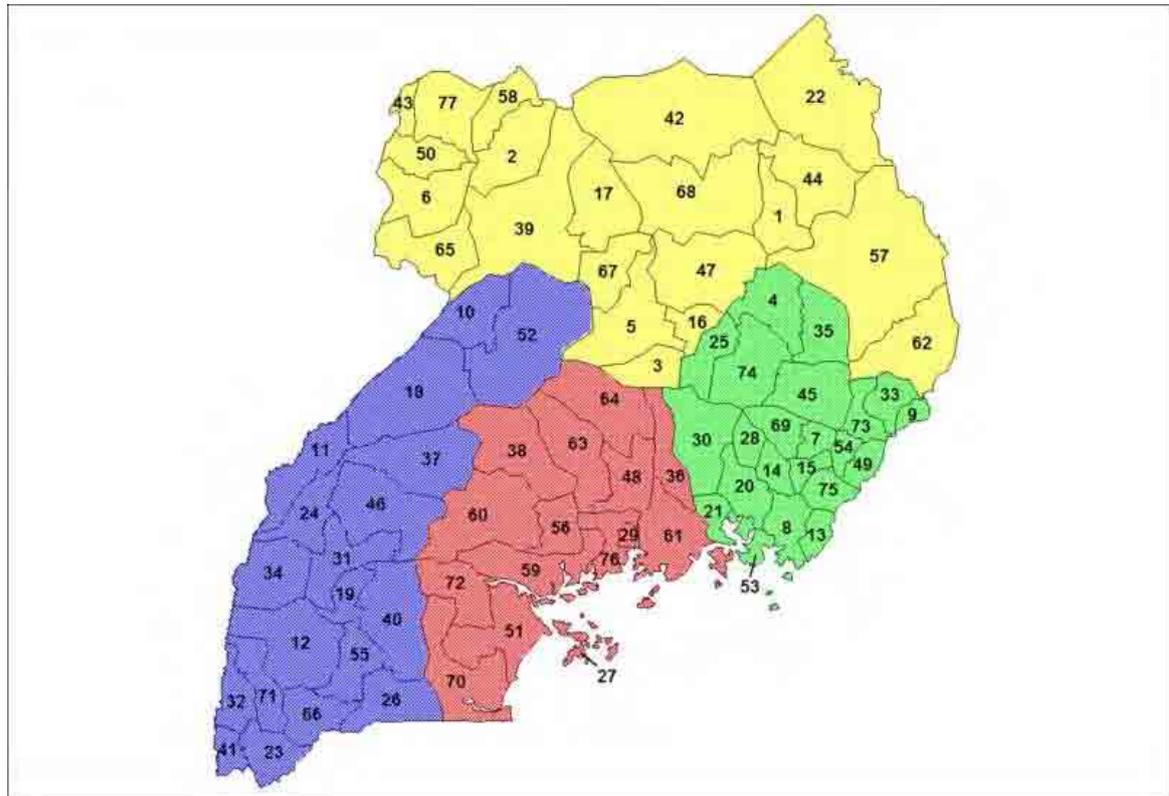
Hierarchy of Local Government System in Uganda



Source: Decentralisation Secretariat, Uganda

Appendix 6

Districts of Uganda



Source: Wikipedia, encyclopaedia (2007)

Legend: -Numbers represent names of districts as indicated in table A below.
 -Colour represents names of regions, West Blue, North Yellow, and Central Pink

Table A: Districts and Regions of Uganda.

Central (Red)

Eastern (Green) Northern (Yellow)

Western (Blue)

Map	District
27	<u>Kalangala</u>
29	<u>Kampala</u>
36	<u>Kayunga</u>
38	<u>Kiboga</u>
48	<u>Luwero</u>
	<u>Lyantonde</u>
51	<u>Masaka</u>
56	<u>Mityana</u>
59	<u>Mpigi</u>
60	<u>Mubende</u>
61	<u>Mukono</u>
63	<u>Nakaseke</u>

Map	District
4	<u>Amuria</u>
7	<u>Budaka*</u>
	<u>Bududa</u>
8	<u>Bugiri</u>
	<u>Bukedea</u>
9	<u>Bukwa</u>
13	<u>Busia</u>
14	<u>Namutumba</u>
15	<u>Butaleja</u>
20	<u>Iganga</u>
21	<u>Jinja</u>
25	<u>Kaberamaid o</u>
28	<u>Kaliro</u>

Map	District
1	<u>Abim</u>
2	<u>Adjumani</u>
3	<u>Amolatar</u>
39	<u>Amuru</u>
5	<u>Apac</u>
6	<u>Arua</u>
16	<u>Dokolo</u>
17	<u>Gulu</u>
22	<u>Kaabong</u>
42	<u>Kitgum</u>
43	<u>Koboko</u>
44	<u>Kotido</u>
47	<u>Lira</u>

Map	District
10	<u>Bulisa</u>
11	<u>Bundibugyo</u>
12	<u>Bushenyi</u>
18	<u>Hoima</u>
19	<u>Ibanda</u>
26	<u>Isingiro</u>
23	<u>Kabale</u>
24	<u>Kabarole</u>
31	<u>Kamwenge</u>
32	<u>Kanungu</u>
34	<u>Kasese</u>
37	<u>Kibale</u>
40	<u>Kiruhura</u>

64	<u>Nakasongola</u>
70	<u>Rakai</u>
72	<u>Sembabule</u>
76	<u>Wakiso</u>

30	<u>Kamuli</u>
33	<u>Kapchorwa</u>
35	<u>Katakwi</u>
45	<u>Kumi</u>
49	<u>Manafwa</u>
53	<u>Mayuge</u>
54	<u>Mbale</u>
69	<u>Pallisa*</u>
73	<u>Sironko</u>
74	<u>Soroti</u>
75	<u>Tororo</u>

50	<u>Maracha-Terego</u>
57	<u>Moroto</u>
58	<u>Moyo</u>
62	<u>Nakapiripirit</u>
65	<u>Nebbi</u>
67	<u>Oyam</u>
68	<u>Pader</u>
77	<u>Yumbe</u>

41	<u>Kisoro</u>
46	<u>Kyenjojo</u>
52	<u>Masindi</u>
55	<u>Mbarara</u>
66	<u>Ntungamo</u>
71	<u>Rukungiri</u>