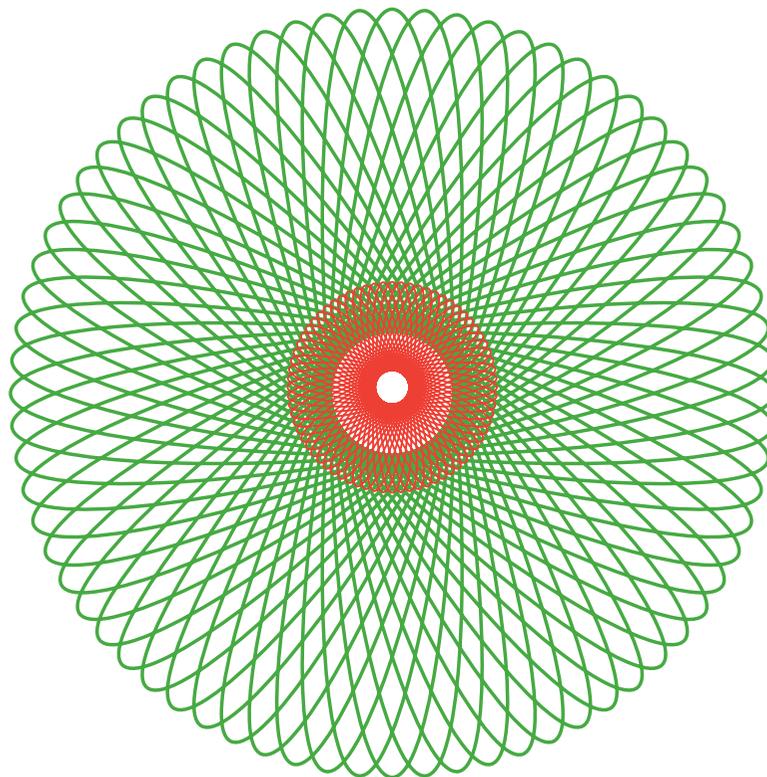


A New Role for Citizens in Public Procurement

Preface by **Huguette Labelle**

Foreword by **Federico Reyes Heróles**

Coordinated by **Eduardo Bohórquez** and **Deniz Devrim**

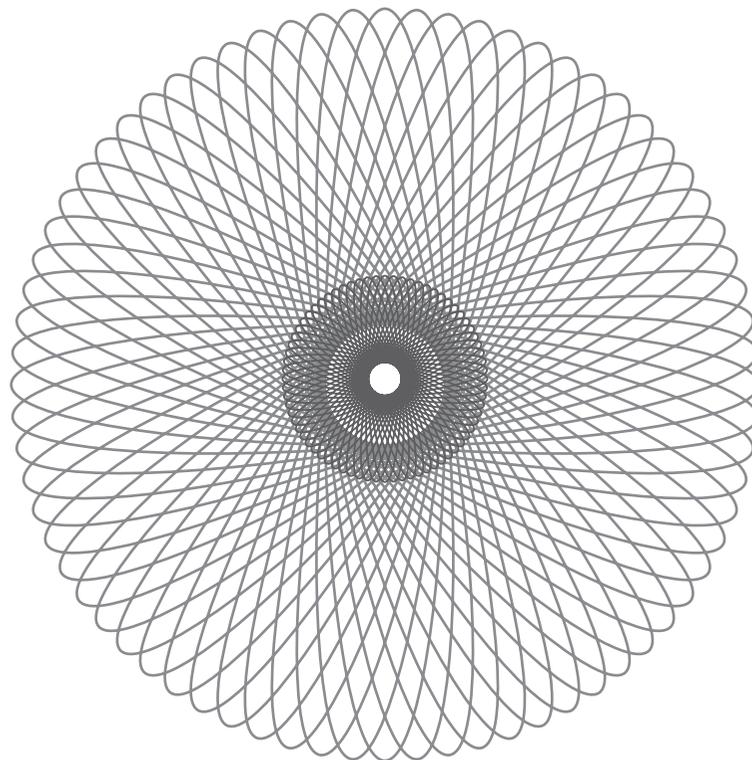


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citizens&markets

A TRANSPARENCIA MEXICANA INITIATIVE



Transparencia Mexicana was founded in 1999 as the national chapter of Transparency International (TI), the global coalition against corruption. Transparencia Mexicana (TM) approaches corruption from a holistic standpoint, engaging with public and private actors, to reduce corruption by creating changes in the institutional and legal framework of the Mexican state. Acknowledging that forms of corruption adapt to country-specific norms, TM pursues an agenda tailored to fight corruption within Mexico, while at the same time adhering to standards and practices established by TI Secretariat.

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FEEDBACK WANTED

Citizens&Markets is a research initiative in progress; therefore your suggestions and critical feedback on the issues treated in this publication are welcome and will be treated with great care. Please contact Transparencia Mexicana at: info@tm.org.mx



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INDEX

Abbreviations	9
Preface. Huguette Labelle, Transparency International	13
Acknowledgments	15
Foreword. Federico Reyes Heróles, Transparencia Mexicana	17

I. The New Boundaries of Public Control

<i>Towards New Relationships between Citizens, Companies and Governments</i> Eduardo Bohórquez and Deniz Devrim, Transparencia Mexicana	23
<i>Transparency as a Basis for Engaging Citizens in Public Procurement: Trends in OECD Member Countries' National Governments</i> James Sheppard and Maria Emma Cantera, Organisation for Economic Co-operation and Development	31
<i>Civil Society Procurement Monitoring: Challenges and Opportunities</i> Francesco De Simone and Shruti Shah, Transparency International USA	41

II. Trends Around the Globe

KENYA

<i>From Passive to Active Stakeholders: Citizen Accountability Mechanisms in Procurement Process in Kenya</i> Edward Odhiambo Okello, Ethics and Anti-Corruption Commission Kenya	53
---	----

CAMEROON

<i>Amplifying Citizens' Voices: The Role of Civil Society in Promoting Accountability and Transparency in Cameroon's Public Contract Regime</i> Durrel N. Halleson, Transparency International Cameroon	63
---	----

...INDEX

BRAZIL

The Risk of Corruption in Public Procurement in Brazil

Bruno Speck, Universidade de Campinas Brazil, and **Edna Delmondes**,

Tribunal de Contas do Estado da Bahia Brazil 73

SLOVAKIA

Open Public Procurement Portal: Reflections from Slovakia

Matej Kurian, Transparency International Slovakia 83

TIMOR-LESTE

What Do We Have to Lose? Timorese Citizens' Diminishing Confidence in Public Procurement

Deborah Cummins, University of Newcastle, Australia, and **Alexandre Gusmão**,

Universidade Nacional Timor Lorosa'e, Timor-Leste 91

MEXICO

Competition, Transparency and Consumer Welfare in the Design of Public Procurement Procedures

Rodrigo Morales Elcoro, Federal Competition Commission of Mexico 101

Distortions and Gaps in Mexico's Public Procurement System

María Cristina Capelo and Marien Rivera, Center of Research for Development 111

Access to Information as a New Tool to Empower Citizens in the Decision Making Process to Allocate Public Resources: The Case of Mexico.

Angel Trinidad Zaldivar, Federal Institute of Access to Public Information 121

Biographies of the Authors 129

Editorial Team 136



ABBREVIATIONS

ALACS: Advocacy and Legal Advice Centers

ARMP: Public Contracts Regulatory Agency/Agence de Régulations de Marchés Publics, Cameroon

BoQ: Bill of Quantities, Timor-Leste

CAC: Anti-Corruption Commission/Comissão Anti-Corrupção, Timor-Leste

CANADEL: Support Centre for New Local Development Alternatives/Centre d'Accompagnement de Nouvelles Alternatives de Développement Local, Cameroon

CDF: Constituency Development Fund, Kenya

CEO: Chief Executive Officer

CFA: African Financial Community/Communauté Financière Africain

CFC: Federal Competition Commission/Comisión Federal de Competencia, México

CFE: Electricity Federal Commission/Comisión Federal de Electricidad, México

CIDAC: Center of Research for Development/Centro de Investigación para el Desarrollo, México

CIDE: Centro de Investigación y Docencia Económicas en México

CSO: Civil Society Organization

COMAIP: Mexican Conference of Access to Public Information/Conferencia Mexicana de Acceso a la Información Pública

COMELEC: Commission on Elections of Republic of the Philippines

CONAC: National Anti-Corruption Commission/Commission National Anti-corruption, Cameroon

CPV: Common Procurement Vocabulary

CRETES: Centre for Research in Economic Studies and Survey/Centre de Recherche et d'Etudes en Economie et Sondage, Cameroon

DAC: Development Assistance Committee of OECD

EACC: Ethics and Anti-Corruption Commission, Kenya

FCFA: Central African CFA franc

FLEC: Federal Law of Economic Competition/Ley Federal de Competencia Económica, México

FOI: Freedom of Information

GDP: Gross Domestic Product

GIRE: Information Group on Chosen Reproduction/Grupo de Información en Reproducción Elegida, México

IDB: Inter-American Development Bank

IFAI: Federal Institute for Access to Information and Data Protection/Instituto Federal de Acceso a la Información y Protección de Datos, México

IMCO: Mexican Institute for Competitiveness/Instituto Mexicano para la Competitividad

IMF: International Monetary Fund

IMSS: Mexican Social Security Institute/Instituto Mexicano del Seguro Social

ISHR: Institute for the Study of Human Rights - Columbia University, New York

ISSSTE: Social Security Institute for State Workers/Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado, México

IT: Information Technology

KACC: Kenya Anti-Corruption Commission

KKN: Corruption, Collusion and Nepotism/Korupsaun, Kolusaun and Nepotismu

KONEPS: Korea Online E-Procurement System

LATF: Local Authority Transfer Fund, Kenya

LBT: Lowest Bid Tendering

MXN: Mexican peso

NACCSC: National Anti-Corruption Campaign Steering Committee, Kenya

NAFTA: North American Free Trade Agreement

NGO: Non-governmental Organization

OECD: Organisation for Economic Co-operation and Development

PaCSIA: Peace and Conflict Studies Institute of Australia

PCC: Public Contract Code, Cameroon

PCDC: Procurement Capacity Development Centre

PEFA: World Bank's Public Expenditure and Financial Accountability Initiative

PEMEX: Mexican Petroleum/Petróleos Mexicanos

PHP: Philippine peso

PIB: Public Investment Budget

PPOA: Public Procurement Oversight Authority, Kenya

RDTL: Democratic Republic of Timor Lest/Republica Democratica Timor Lorosa'e

SCT: Ministry of Communications and Transport/ Secretaria de Comunicaciones y Transportes, México

SFP: Ministry of Public Administration/Secretaria de la Función Pública, México

SIOI: Italian Society for International Organizations/La Società Italiana per l'Organizzazione Internazionale

SIPAM: Salud Integral para la Mujer, Mexico

SME: Slovak Daily Newspaper

TCE-Ba: State Auditing Institution of Bahia/Tribunal de Contas do Estado de Bahia, Brasil

TED: Tenders Electronic Daily

TI: Transparency International

TI-C: Transparency International, Cameroon

TI-USA: Transparency International, USA

TISA: The Institute for Social Accountability, Kenya

TM: Transparencia Mexicana

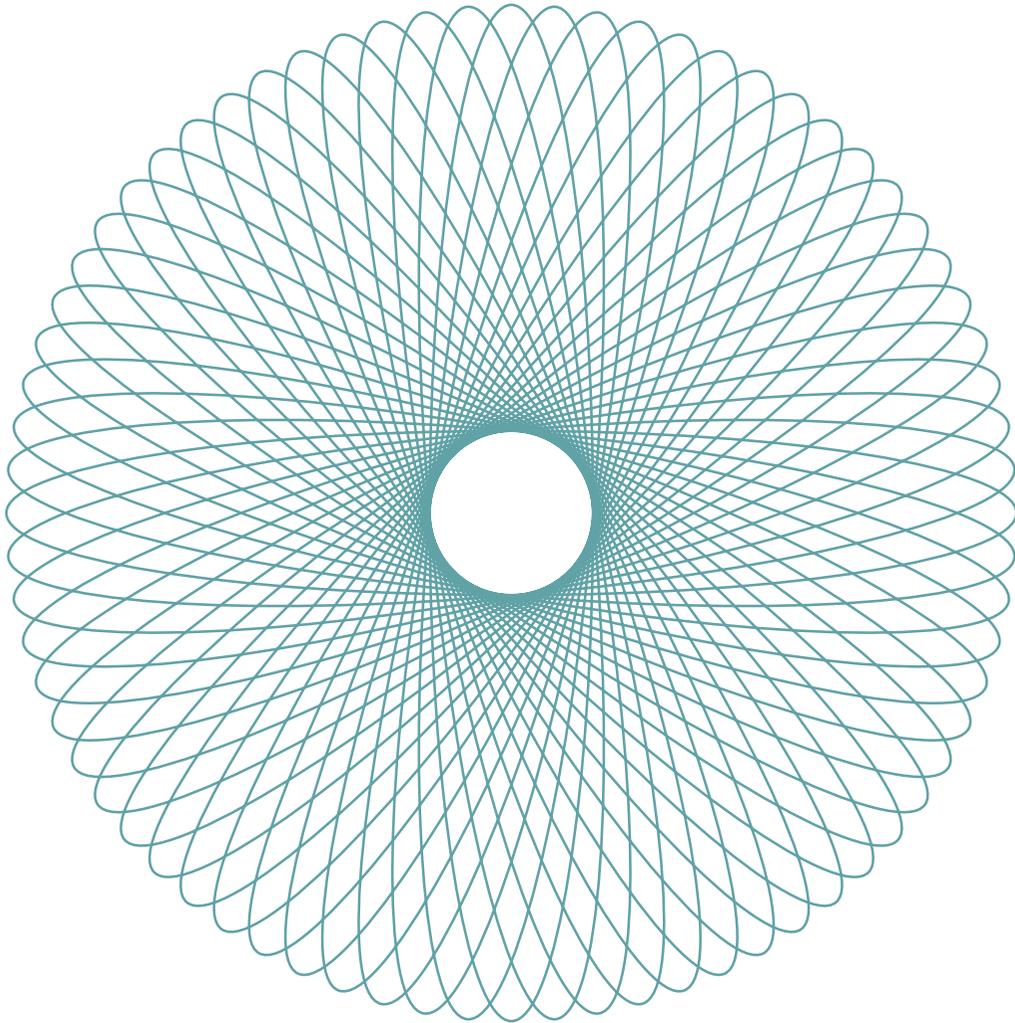
UNDP: United Nations Development Programme

UNICAMP: Department of Political Science at Universidade Estadual de Campinas Brazil

UNTL: National University of Timor Lest/Universidade Nacional Timor Lorosa'e

U.S.: United States of America

WB: World Bank



PREFACE

HUGUETTE LABELLE, CHAIR, Transparency International

Globalisation has the potential to raise living standards for citizens around the world, as well as bearing the risk of excluding people from those benefits. Ensuring that globalisation contributes to a more equitable and sustainable form of economic growth requires the participation of citizens in monitoring how the global economy is changing and how it impacts the life of people.

The Arab Spring has shown the power of people in their potential to change political systems. Transparency International, the global civil society organisation leading the fight against corruption, aspires to support the emergence of a broad-based social movement standing up to corruption, especially where it violates human rights and threatens the most vulnerable. In Transparency International's Strategy 2015, we underline that sustainable change requires broad public support. A widespread public engagement will reinforce the demand for solid institutions and provide a strong mandate for political leadership to succeed in their commitments.

In many countries, citizen's monitoring of governments has been fundamental to increase transparency and integrity in the last two decades. Today we know that it is not only governments that influence citizen's lives, but also multinational companies. In an interconnected global market they also have the power to shape the life of people, playing a key role for the well being of societies. This is why the functioning of markets and their influence for the development of societies needs to be accompanied by a stronger involvement of citizens, going beyond the monitoring of governments.

This is why we address the impact of global economic forces in Citizens and Markets, part of a series of analysis and research lead by Transparencia Mexicana, our National Chapter in Mexico. It is no coincidence that this effort started in Mexico. Countries like Mexico, Brazil or India are facing new challenges in terms of regulation, competition and consumer rights. Their recent role in the global economy makes them marketplaces where new trends are being experienced and the consequent rules being crafted.

In order to elaborate future instruments that can help in the monitoring of markets, it is important to gain a sound understanding of its dynamics. Finding ways to watch the private sector more closely, the spheres where the private and public sectors meet, and the functioning of markets in a broader sense requires a sound analysis of the emerging trends for citizen's participation as well as of the role that open data and its management can play for future monitoring instruments. To encourage more citizens to get involved in the global discussion, Transparencia Mexicana has gathered examples and practices from all over the globe, proving that our movement depends on appropriate information flows and knowledge hubs. We have also made a conscious effort to make this book available as an e-book to facilitate its global distribution. Transparency International will continue to work tirelessly in making our quest for transparency that serves the cause of social justice and human dignity around the world.





ACKNOWLEDGMENTS

The publication *A New Role for Citizens in Public Procurement*, the first issue of the series Citizens and Markets, could not have been prepared without the efforts and passion of many individuals. We are very grateful to Transparencia Mexicana's valuable board members for giving us the mandate in 2010 to open a research line on Citizens and Markets and to launch a series of publications. We would also like to thank our staff members who have helped to coordinate the global call for papers for this publication as well as the different review rounds of the articles included in this publication. We are especially grateful to all the authors that have worked on their contributions with great dedication. We would like to acknowledge the efforts of Transparencia Mexicana's Editorial Advisory Panel whose members helped to refine the publication; we very much appreciate the support of our staff members Gabriela Ramírez, Carla Crespo, Anne Varloteau, Radka Konecna and Regina Cantú for the efforts they put into this project, and we especially thank Kelly McCarthy for her editorial work.

Our analysis of public procurement processes in Mexico and on international standards as well as indicators measuring transparency and citizen's engagement in public procurement would not have been possible without the valuable analysis and input from our colleagues Vero Baz, Maria Cristina Capelo and Marien Rivera from the Center of Research for Develop-

ment (CIDAC). The joint project between CIDAC and Transparencia Mexicana on public procurement in the federal states in Mexico has been a very important step in our joint assessment. Furthermore, the research outcomes of public procurement processes would not have been so successful without the valuable exchange of ideas during our seminars and workshops on public procurement in 2011.

We thank Marcela Rivas for her creativity and tireless efforts that she put in this publication. Also, we are very happy to introduce Transparencia Mexicana's new typography *Integra*, designed by Óscar Yáñez.

The launch of the paradigm on Citizens and Markets has been the result of innumerable discussions among staff members as well as with external colleagues that are part of our global knowledge network. Transparencia Mexicana especially appreciates the ongoing analytical discussions about the new emerging relationships between citizens, the private sector and the public sector with Huguette Labelle, Peter Eigen, Federico Reyes Heróles, Elisabeth Yáñez, Kevin Rogan, Leonel Lorenzana, Angela McClellan and many others who have dedicated their time and expertise for the discussions on the design of this new paradigm. A special word of appreciation goes to the Siemens Integrity Initiative, who has believed in our analytical approach and has made possible the production of this publication.



FOREWORD

Citizens & Markets: Wakening the Ally

FEDERICO REYES HEROLES, CHAIR OF THE BOARD of Transparencia Mexicana

The degree of transparency and opacity in a society is not predetermined. Unlike what some development theorists thought during the sixties and the seventies, the socio-economical and educational levels are factors but not *factotum*. These are great news: countries with poor development are not doomed to wait for the arrival of higher stages to become more transparent. Transparency is not the last station of the train. The other side of the story is the existence of developed or rich countries where corruption is comfortably installed without any threat in the horizon. The social cost these societies pay is huge, even though they are developed. Among the many achievements of Transparencia International is the transformation of the predominant paradigm in the corruption debate: countries are not transparent because they are developed, they are developed because they are transparent.

The question of how much the acts of corruption cost to the development of a country may cause obsession. In any case, we know that the cost is high. For example in Mexico, my country, some estimations show that the multiple impacts of corruption could sum 5% of the annual Gross Domestic Product. This percentage is the equivalent of the total expenditure in education. The final projections are terrifying. Now, if transparency accelerates welfare and development the question should be: what can we do to stop opacity and corruption? The answers to this question are divided as commonly happens in any social science, especially when it deals with such a novel area.

There is a trend with an institutional approach, which promotes reforms to both institutions and laws as a key element. The reasoning behind this trend is simple. In the relationship between citizens and institutions we can find good incentives and perverse ones.

This vision enriched the debate and brought multiple benefits to it. On the other hand there is another trend with a cultural approach that promotes the change of attitudes and values. I give you an example. When our national chapter - Transparencia Mexicana - began its work, two out of three Mexicans did not consider corruption to be a major problem. Nowadays this proportion has changed and the differences of opinion between the states are clearly identifiable. Everywhere people speak of transparency, at home, in school, in the media.

Countries are not transparent because they are developed, they are developed because they are transparent

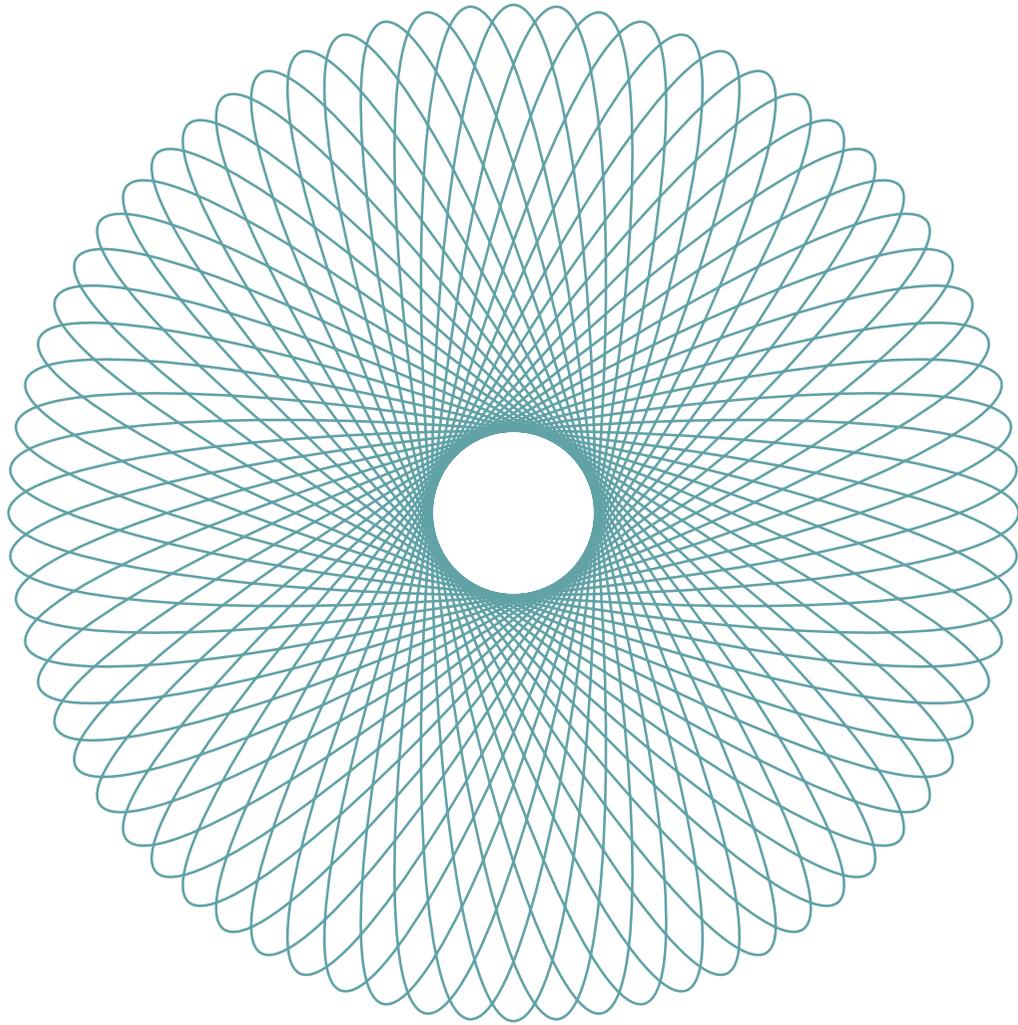
We know that no trend has a definite solution and that the set of solutions, in plural, are, as always, the result of the sum of efforts and perspectives. Nonetheless, one thing that we have learned in the process is that the biggest ally in the fight against corruption is the citizen. A citizen that measures the importance of the problem and that acts in accordance with his own possibilities may change the course of a nation. This citizenship, participant and in some way intolerant towards corruption has a central role fighting back the problem. This could mean a major shift of perspective. Today thanks to social media and information technologies we have the possibility of convening the citizenship for very specific demands without having the need of size, complexity and finances from behalf of the organizers, they could be national chapters of Transparency International or other institutions.

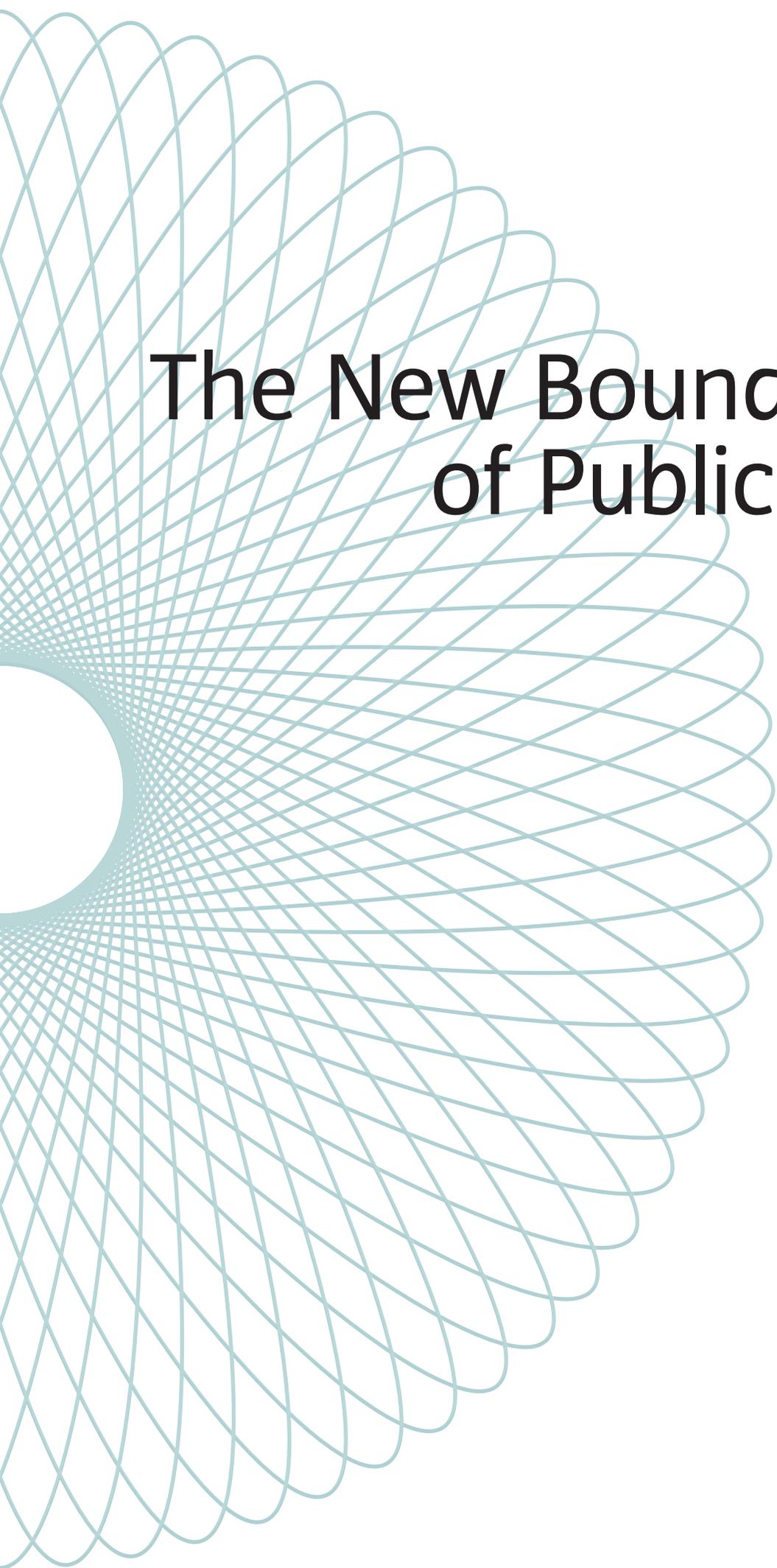
A couple of years ago, in an international meeting of philanthropy in Argentina, I heard the expression that best captures this change:

we can have organization without organizations. I give some examples that apply for Mexico. In the health area we manage to organize 10 thousand parents that systematically watch the conditions of the nurseries their children attend to. We want to bring this experience also to the clinics of social security. In the educational area, the principals of multiple high schools in the Mexico City's metropolitan zone give a report once a year of the use they made of the public and family resources they were assigned. They give this report in front of teachers, students and their parents. This is an exercise with multiple learning experiences regarding accountability. Around a million people have participated in this exercise. In coordination with the federal government, Transparencia Mexicana launched a contest for citizens so that they proposed solutions to the most obnoxious and useless procedures. We received nearly 20 thousand solutions. The Mexican President gave out the awards. The potential for strategy is enormous.

To promote that citizenship keeps an organized surveillance of public procurement and markets could mean a shift in the potential for control that every society has. We know that public procurement is the place where private interests become corruption acts in detriment of public interests. We have long talked about regulation in this matter but little about citizen surveillance. The same happens when citizens pressure the manufacturers and private producers in a direct way. The power of acquisition and the punishment of the consumer become highly efficient and powerful tools.

This publication aims to provoke a discussion regarding a potential, which is, in some cases, still dormant. Exposing the successful experiences could surely lead us to reflect on efficient and effective courses of action. On behalf of Transparencia Mexicana, I would like to thank the participation of the collaborators of this book. The reader will find valuable material in these pages that will help our mission. Let's hope it will be useful.





The New Boundaries of Public Control



Towards New Relationships between Citizens, Companies and Governments

EDUARDO BOHÓRQUEZ » DIRECTOR, Transparencia Mexicana

DENIZ DEVRIM » PROGRAM COORDINATOR, Transparencia Mexicana

ABSTRACT

Today's social, political and economic processes are deeply shaped by the interaction of three groups of actors: citizens, governments and firms. Cutting-edge analysis requires both reviewing each actor's behavior, but also considering the relations that these actors establish among themselves. It is not only the nature and intrinsic values of the involved actors what defines their conduct; the quality of their relationships often explains why reforming institutions or curbing corruption is so difficult. The liberalization of financial markets resulted in overlapping roles among social, political and economic actors, making it challenging to describe their different interests and values. In liberal economies, citizens can simultaneously be consumers, government representatives or investors in companies. Governments have the double challenge of defending the public interest while becoming advocates of their own firms operating globally or as promoters of foreign investments. As new interests arise, internal contradictions in the expected role of actors are more evident. Should we expect governments to defend the interests of "national" companies owned by "foreign" shareholders or to simply collect their taxes? Would the citizen's interest of this "nation" be local consumer protection or the individual needs protection by the government of the "foreign" investor? And what if the citizen is also a shareholder? Will he or she be equally satisfied by the enforcement of his consumer rights or her property rights? The best possible solution to this conundrum is to focus on the scope and nature of the relationship rather to assume preferences or attitudes from traditional social roles. This is why Citizens and Markets aims for an in-depth analysis of the emerging relations between these three groups of societal actors. This first publication of the Initiative, 'A New Role for Citizens in Public Procurement', aims to approach the evolving relationships among actors by analyzing trends around the globe of citizen's participation in public procurement processes, a place where governments and companies usually were alone, and where citizens now are thriving to meet and interact.

The role of governments, companies and citizens is not clear-cut. The liberalization and democratization of the financial markets has resulted in a superimposition of social roles and has made it increasingly challenging to describe the function of the involved actors. Citizens can be, simultaneously, consumers, part of the government and entrepreneurs; non-profit organizations can be important sources for employment, and the philanthropic sector can bring considerable wealth to nations, whereas some companies –apart from increasing wealth for their associates– also aim to achieve benefits for the societies they operate in. The British water company *One*, for example, claims that every time you buy a bottle of water, part of the profit is donated to projects in developing countries, which means that the consumer ends up financing almost directly development with each bottle of water he or she buys.

Not only citizens and companies have multiple roles, the function of public administrations around the world has also become more complex. The public sector is facing challenges in the sense that its mandate can sometimes be contradictory: On the one hand, governments are obliged to defend foreign investments, with the aim to increase growth and employment. On the other hand, as regulators, governments know that the consequences of foreign investments –through financial exemptions or special conditions– can be against the public interest that they are supposed to protect. Furthermore, the public sector has to provide public services that are in fact operated by the private sector. In many municipalities around the world a considerable part of the public services is in fact outsourced.

These examples show that promoting and defending the public interest has become an increasingly complex issue. The superimposition of social roles challenges the priorities of those who aim to protect the public interest. The citizen can be at the same time consumer and shareholder, the company can act against or in favor of the public interest and the government has to be a strong regulator and at the same time has the duty of promoting investments. The democratization of the financial markets, where citizens can be small entrepreneurs at the same time as employees, makes it increasingly difficult for citizens to speak in the name of public or collective interests. Although the idea of social classes is still useful, the description of the many public identities of individuals and groups has become a real challenge. The evolving interactions among citizens, governments and companies --that were formerly studied as monoliths-- make it necessary to reconsider the limits of the traditional ways of public control.

Promoting Integrity in the Marketplace

Today's economic processes are mainly shaped by the interaction of three main groups of actors: The citizen, the government and the company. These three actors have relations among one another –citizens with governments, governments with companies and companies with citizens. These relations occur in an area that historically has been called the *market*. A market is an area where forces of demand and supply operate and where buyers and sellers interact –directly or through intermediaries– to trade goods, services, contracts or instruments. In this area of economic activity there is a potential for transactions to take place. The type of interactions among the three identified actors can be manifold. On the market, governments can buy services or goods from the private sector using citizens' taxes, citizens can benefit from public services offered by governments, and citizens can also buy products or services produced or offered by private companies, including services that were tradition-

ally guaranteed by the public sector, such as access to education or health.

Citizens, Governments and Companies: From a Role-model Analysis to an Analysis Based on Interactions

After a decade of working experience in the control of corruption, the National Chapter of Transparency International in Mexico, *Transparencia Mexicana*, took the decision to launch a global initiative that focuses on the interactions and relationships among the actors that operate on the marketplace. A significant amount of evidence, coming from the academic field and direct interventions, showed that risks for integrity come from the quality of the institutions as much as from the quality of the interactions and relationships that these institutions build. It is the nature and quality of the relationships, and its context, rather than the intrinsic values of the involved actors what explains in many cases why corruption prevails.

The traditional role-model analysis can be illustrated by an old fable. While trying to cross the river, a scorpion calls for help and a frog comes into scene. The frog happily offers to help the scorpion and invites it to jump on his back. The frog transports the scorpion through the currents of the river. Once they reach the opposite shore, the scorpion uses its poisoned sting against the frog. “Why do you do that?” asks the dying frog. “Because stinging is in my nature” responds the scorpion. In the fable, the intrinsic nature of scorpions and frogs explains their behavior. A corrupt conduct –the fatal sting– is explained as part of the nature of a species.

Under new forms of analysis, corruption could not be simply explained as part of the nature of companies, governments or citizens. The scorpion starts thinking that corruption –stinging the frog– is part of its nature only after having crossed the river. Its “nature” was not present when calling for help or when in-route. It is the “natural” thing to do, because it is rational to take place in a corrupt trans-

action once that you are in a secure harbor. The relationship of frogs and scorpions is not really defined by their nature. In fact, the strength of the river and its depth are also extremely effective factors to explain why the scorpion does not sting the frog while crossing the river.

A firm’s participation in a corrupt transaction does not depend only on its structural need for profits or in the organizational culture of a public sector bureaucracy. Corruption is not intrinsic to their strategic objectives. The behavior of firms and governments is defined in many ways by the characteristics of a concrete market in terms of competition, scarcity and independent monitoring. None of them are always frogs or scorpions.

The behavior of a firm is defined in many ways by the characteristics of a concrete market in terms of competition, scarcity, and independent monitoring

The interaction between the private sector, governments and citizens can contribute to people’s well-being and it can improve their access to essential public services. However, depending on the quality of this relationship, it can also create inequalities in the society and can result in poor quality services for citizens. Whatever the social impact of this interaction might look like, one thing has become clear: People’s lives are influenced by factors that go beyond the performance and quality of governments, which means that citizen’s oversight of governments has become insufficient. The State has reached a moment of intense pressure for fulfilling rights and providing quality public services. This demand requires a lot of innovation in the way public and private sectors relate to each other. From the National Health Service in the United Kingdom to the use of pension funds to finance capital mar-

kets, new multi-stakeholder partnerships are designed and operated every day; thus, the need for a better understanding of these new relationships.

Re-signifying Citizens

In today's liberal economies, citizens can adopt many roles: a consumer of financial goods in Mexico can be a shareholder of Petrobrás or buy public debt bonds in India, thereby becoming a socio-capitalist of a public enterprise in Brazil or of a bank in London that provides services to the Ministry of Finance of India. The owner of a cellular phone is a potential shareholder of her network provider, which can represent a contradiction concerning her incentives: As a consumer, she aims to have lower prices and higher quality levels for the service, whereas as a telecomm company shareholder higher prices are not necessarily against her interests. This example shows that the interaction between the citizen and the firm is not one-dimensional. On the one hand, the individual—as a consumer—demands goods and services that require better regulation of the private sector by the government. At the same time—as an investor—the same citizen demands higher returns and profits from companies, which in many cases is against better regulation and public control.

Even if consumers or citizens still claim for better quality of the services from governments, it is often the external private providers that shape the way public services are provided

Regarding the function of citizens and civil society to control and monitor actors that influence their lives, today's context requires new tools. During the second half of the past century, a growing global civil society exercised independent monitoring of governments to

protect the public interest. With the expansion of environmental conservation and of consumer rights movements, the heat turned to private companies. A call for a new public responsibility arose, including the creation of national integrity systems and the development of a framework for corporate social responsibility in companies. However, the institutional innovation of the past decade, including the birth of public-private partnerships and complex variations of public finance tools, asks for new forms of understanding and affecting governments and firms. The traditional boycott and the petition letter are fading away in a world where public responsibility is changing. A context, where the private sector has gained considerable power in influencing social realities, requires a new framework for accountability.

The Public Sector: Still a Monopoly?

Sixty years ago, it was unimaginable for citizens that sanitation services could be provided by a private company. Today, it is still widely believed that public services are always carried out by the state. However, new forms of alliances (such as Public-Private-Partnerships) have allowed new administration models, which have resulted in an increasing number of services that are officially provided by governments, but operated by the private sector. From the "Golden Triangle" in Washington, D.C. to "Aguas de Barcelona" in Latin America, outsourcing schemes have become increasingly used to guarantee the provision of social services, administrative procedures and public works. Even if consumers or citizens still claim for better quality of the services from governments, it is often the external private providers that shape the way public services are provided.

In such a context, governments are required to include the vision of citizens and companies in their activities. There are two main incentives for them to do so. Including citizens in the decision-making processes can enhance the public sector's legitimacy and also increase citizen's trust and support. Apart from the question of legitimacy, there is a worldwide urgent need to modernize public administrations. The private

and social sectors can play a fundamental role in this endeavor. The modernization of public administrations cannot be successful if the only vision that is included is of those that operate from the inside. Acting in a coordinated framework with companies and citizens, can enable governments to better understand the complexities of certain issues, identify concrete problems, and to develop new creative tools.

The Private Sector: Acting in the Name of the Public Interest?

Today, the private sector continuously exercises pressure on governments in order to pursue its commercial interests. History shows that the private sector has always affected the behavior of the State, succeeding in regularizing activities that formerly had no regulation. Among the examples feature the legalization of certain drugs, casinos and usury. It is the legalization of certain activities –and its subsequent regulation— what transforms an illegal activity in a regulated market. The fact that previously illegal activities ended up in legal frameworks shows that social changes as well as the active promotion of the interests of the private sector have affected public policies, laws and public decision making for centuries. When this relation between the public and private sector escapes publicity or when the instruments used for gaining influence are illegal (such as bribery), the relationship transforms into so called “state capture”. The state then stops promoting the public interest and its decisions end up being distorted because of legal and illegal interests that can act against the public interest.

When it comes to the relationship between individuals and the private sector, companies try to persuade individual consumers to acquire their products. In advanced industrial economies, marketing considerations –used both to increase sales of existing products and to introduce new products– play a major role in determining corporate policy. Once primarily concerned with increasing sales through advertising and other promotional techniques, corporate marketing departments now focus on

credit policies, product development, customer support, distribution, and corporate communications. They may make psychological and demographic studies of a potential market, experiment with various marketing strategies, and conduct informal interviews with target audiences.

The initiative Citizens and Markets invites its global knowledge network to study the relations between actors, aiming to identify the new roles, instruments and agendas

Since the nineties, international organizations and civil society have been claiming a more human face of the global market. The tool that has been used by companies worldwide to support sustainable development has been the so-called corporate social responsibility (CSR). However, since more than a decade, the concept of CSR has been increasingly criticized as being merely a public relations tool. Many have argued that private companies could hardly ever take the role of protecting the public interest on a voluntary basis within the context of the existing market mechanisms. Also, it has been criticized that the initiatives launched by companies, such as codes of conduct or non-profit investments, were unilateral steps and ignored the real concerns of citizens. Some transnational companies recognized the limits of the traditional concept of social corporate responsibility and the necessity to go beyond self-regulation, beginning to participate in multi-stakeholder initiatives. From their perspective acting together with citizens and governments can have various benefits. The alliances can provide a better relationship to the communities where the company is active, they can reduce the risk of their activities, and the deliberation with other sectors can result in more creative outcomes and innovation.

How Do We Approach the New Paradigm?

Citizens and Markets aims to identify new roles and possible partnerships as well as the effects that new emerging relationships can have for the development of societies, the private sector and public administrations. The relationships between these actors can take a multitude of different forms, and each actor can play a different role according to the context. Therefore, the analytical models need to be dynamic and tolerant towards changing constellations. An analysis that interprets the relations between citizens and governments (citizens monitoring), or between governments and private sector (Public-Private-Partnerships) as if those actors were monoliths, does not allow capturing the complexity and dynamic of the market where they interact.

This Issue: A New Role for Citizens in Public Procurement

Analyzing different contexts where governments, companies and citizens meet, allows breaking down the paradigm into concrete topics. Public procurement is one of the prominent meeting places for governments and companies, and since some time also for citizens. The way in which citizens engage in public procurement is key to understand its future development. As in many countries citizens have kept an eye on procurement processes, sharing experiences is a fundamental exercise in order to understand the emerging trends in this topic. The articles that feature in this publication represent voices and experiences from Latin America, Africa, Asia and Europe, as well as the public, private, civil society and academic sectors.

Overview of the Chapters

In their contribution “**Transparency as a Basis for Engaging Citizens in Public Procurement: Trends in OECD Member Countries’ National Governments**”, James Sheppard and Maria Emma Cantera, from the Organisation for Eco-

nomie Co-operation and Development (OECD) give an overview about transparency in the public procurement processes in OECD member countries.

In the “**Civil Society Procurement Monitoring: Challenges and Opportunities**” article, readers are provided with a global overview of CSO procurement monitoring, drawing on the activities of CSOs in eight countries including Argentina, India, Mexico, the United States and more. In the article, Francesco De Simone and Shruti Shah from Transparency International USA provide tips for dealing with limited or poor access to information, and other obstacles for CSO procurement monitoring.

The second part of the book focuses on trends around the world. In “**From Passive to Active Stakeholders: Citizen Accountability Mechanisms in Procurement Process in Kenya**”, the tough and critical question is posed –in public procurement, does civil society involvement really make a difference? The author takes no timid approach, presenting an honest and clear analysis of various citizen initiatives for public procurement monitoring in Kenya. A number of efforts and projects are discussed, whether undertaken by individual whistleblowers, semi-organized groups of citizens, established CSOs or even initiated by the government itself, ultimately presenting the reader with a greater understanding of what does and does not work, perhaps not only in Kenya but beyond.

The public procurement environment in Cameroon is presented in “**Amplifying Citizens’ Voices: The Role of Civil Society in Promoting Accountability and Transparency in Cameroon’s Public Contract Regime**”, comparing the local situation with the wider African context and common challenges such as clientelism, nepotism and cronyism, while also providing a more specific overview of the challenges faced in Cameroon in particular. The article details the various endeavors, often at the prodding of the IMF and World Bank, to modernize Cameroon’s legal framework and enforcement system for public procurement and highlights various loopholes that still exist. Indeed, when members of parliament and senior government

officials are winning public tenders, there is work to be done. Despite not being formally engaged in public processes, the article highlights some of the attempts of CSOs to nevertheless be involved as monitors in the process.

The article “**The risk of corruption in public procurement in Brazil**” provides a closer look at the various government methods for conducting public purchases, and the associated risks of corruption for each of those methods. The reader is taken through the steps of identifying the risks, related to discretion and competition, and applying them to the reality of public contracting in the 26 Brazilian states and Federal District, resulting in a clear and simple index indicating which states operate with greater and lesser risks for corruption.

In “**Open Public Procurement Portal: Reflections from Slovakia**”, readers are provided with a unique article-cum-manual on producing online portals for public procurement. The article explains the need for such a system for collecting data and facilitating in general and in the Slovakian context in particular, as well as the immediate and expected results of such labors. Readers are then provided with a step by step guide for establishing their own portal, making what may previously have appeared a daunting, challenging task seem like a simple, manageable process that all organizations can consider.

The article “**What do we have to lose? Timorese citizens’ diminishing confidence in public procurement**” provides an overview of procurement challenges uniquely affected by a history of conflict and the resulting language and cultural divides since. This article also demonstrates the invaluable need to engage and consult with civil society on public projects and if not, poorly planned and consulted projects can literally wash away.

The article “**Competition, Transparency and Consumer Welfare in the Design of Public Procurement Procedures**” highlights the need for comprehensive planning by institutions to prevent corruption and collusion in procurement, providing insight and specific recommendations down to each phase of the bidding process. The article further orients the

reader to this process with an illustrate recent example of large scale collusion in a Mexican public institution, showing just how intricate and complex these efforts to evade justice can be and in turn how thorough institutional measures to prevent such schemes need to be.

In “**Distortions and Gaps in Mexico’s Public Procurement System**”, the reader is offered a unique panorama not only of the national public procurement framework in Mexico, but at the state level in particular, offering a broad analysis and comparison of the legal frameworks across Mexico’s 32 states. Indeed, this is a particularly critical and complex issue in a country operating under a federal system, as companies operating in Mexico often need to understand not just one set of procurement regulations but perhaps as many as 32 depending on the scale of their operations.

The articles that feature in this publication represent voices and experiences from Latin America, Africa, Asia and Europe, as well as the public, private, civil society and academic sectors

The article “**Access to information as a new tool to empower citizens in the decision making process to allocate public resources: The case of Mexico**” underlines that the access to information law in Mexico has the potential to be a mechanism for citizens to influence public expenditure and that it could provide citizens with tools to participate in the allocation of public resources.

What Do We Expect from Readers?

This publication is the first product of Transparencia Mexicana’s global initiative on Citizens and Markets. Your feedback will be of fundamental importance for our future analysis. Therefore, we would appreciate your input and ideas, which can be sent to: info@tm.org.mx



Transparency as a Basis for Engaging Citizens in Public Procurement: Trends in OECD Member Countries' National Governments

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ABSTRACT

This paper highlights the trends in transparency – a necessary condition for effective citizen engagement – in public procurement within OECD member countries as a basis for understanding how it can support direct citizen oversight. This analysis is based on the results of the 2010 OECD Survey on Public Procurement and 2010 OECD Open Government Survey. The paper concludes by suggesting that future attention from governments focus on (1) broadening the scope of proactive disclosure of procurement information to include that related to the post-award stage; (2) making information on public procurement available through a centralized portal rather than separate and disparate government portals; and (3) examining the accessibility and usability of procurement information proactively disclosed by government.

Introduction

Promoting transparency and citizen engagement within government is commonly recognized as a valuable policy instrument for enhancing accountability of public organizations.¹

Transparency, while a necessary condition, is not sufficient in itself to guarantee effective citizen engagement. OECD member countries increasingly recognize that they must invest in lowering barriers to engage the “willing but unable” and make engagement attractive to the “able but unwilling”.² In this regard, in 2008 OECD member countries collectively recognized the need to “empower civil society organizations, media and the wide public to scrutinize public procurement”.³

This paper highlights the trends in transparency in public procurement within OECD member countries as a basis for supporting direct citizen oversight. It makes four observations:

1. Almost all national governments proactively make available budget documents and *ex post* information on general budget execution;
2. Most governments make information available on pre-tendering and tendering phases of the procurement cycle;

¹ OECD, “Citizens as Partners: Information, Consultation and Public Participation in Policy Making”, *OECD Publishing*, Paris, 2001, <http://dx.doi.org/10.1787/9789264195561-en>; OECD, “Open Government; Fostering Dialogue with Civil Society”, *OECD Publishing*, Paris, 2003, <http://dx.doi.org/10.1787/9789264019959-en>; OECD, *Evaluating Public Participation in Policy Making*, *OECD Publishing*, Paris, 2005, <http://dx.doi.org/10.1787/9789264008960-en>

² OECD, “Focus on Citizens: Public Engagement for Better Policy and Services”, *OECD Publishing*, Paris, 28 May 2009, <http://dx.doi.org/10.1787/9789264048874-en>

³ OECD, “OECD Principles for Integrity in Public Procurement”, *OECD Publishing*, Paris, 24 March 2009, <http://www.oecd.org/dataoecd/54/34/48994520.pdf>

3. Information on public procurement is increasingly made available through electronic portals, but is not always available through a single portal; and
4. Few countries directly involve citizens in the procurement process in high-value or complex procurements that entail significant risks of mismanagement and corruption.

This analysis is based on the results of the 2010 OECD Surveys on Public Procurement and Open Government, to which 33 and 32 member countries responded, respectively. The 2010 OECD Survey on Public Procurement focused on transparency of the public procurement cycle, including the online availability of public procurement information. The 2010 OECD Open Government Survey focused on the scope and the implementation of freedom of (or access to) information laws at the national level of government. Both surveys were completed by national government officials from OECD member countries. Unless otherwise specified, the data pertains only to that of national government.

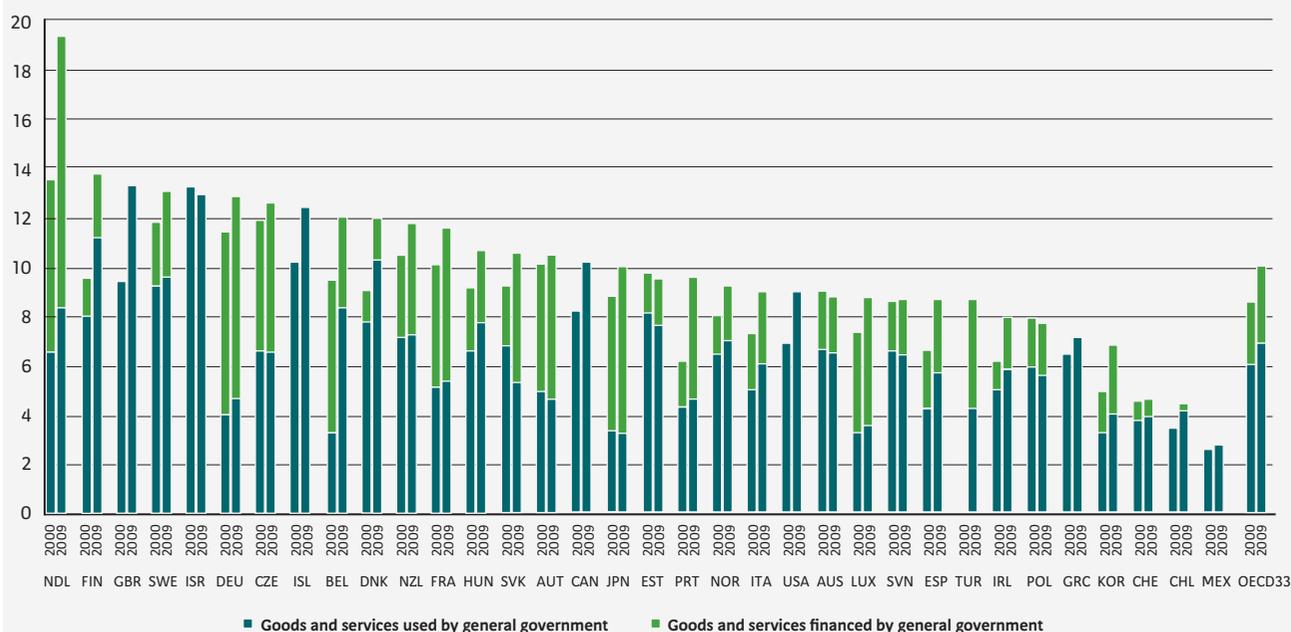
The magnitude of taxpayers' resources channeled through public procurement makes it an issue of high interest to citizens. Public procurement includes **i)** the purchase of goods and services from the non-government sector in order to use them as inputs into their own supply chain (termed “intermediate consumption”); and **ii)** the payment to a firm to deliver goods or services directly to the end user (termed “social transfers in kind via market producers”). This may include the outsourcing of “mainline” functions previously conducted by government. In 2009, government outsourcing averaged ten percent of GDP in OECD member countries. Its importance, however, varies significantly across countries, ranging from 2.7 percent of GDP in Mexico, to 19.4 percent of GDP in the Netherlands. From 2000 to 2009, the share of government outsourcing in GDP increased on average 1.5 percentage points in member countries (see Figure 1). While public procurement provides a major share of economic activity, a large portion of this can be attributed to sub-national (i.e. provinces/states and local/municipal) governments.

OECD member countries have recognized the value of engaging citizens in the oversight of public procurement as critical for enhancing integrity. In 2008, OECD members reached consensus on the Principles for Enhancing Integrity in Public Procurement. The 10 Principles stress that efforts to improve value for money in public procurement should be accompanied by measures to enhance transparency, promote good management practices, prevent waste and misconduct, and strengthen external accountability. Principle 10 focuses specifically on transparency with the objective of facilitating citizen engagement in oversight activities:

“Governments should disclose public information on the key terms of major contracts to civil society organizations, media and the wider public. The reports of oversight institutions should also be made widely available to enhance public scrutiny. To complement these traditional accountability mechanisms, governments should consider involving representatives from civil society organizations and the wider public in monitoring high-value or complex procurements that entail significant risks of mismanagement and corruption.”⁴

4 OECD, “OECD Principles for Integrity in Public Procurement”, *OECD Publishing*, p. 46, Paris, 2009, <http://dx.doi.org/10.1787/10.1787/9789264056527-en>

Figure 1. Expenditure on general government outsourcing, percentage of GDP, 2000 and 2009



Notes: The general government component includes the values of procurement by national, state and local governments, and social security funds, but excludes public corporations, such as state-owned utilities. Data for Australia are based on a combination of Government Finance Statistics and National Accounts data provided by the Australian Bureau of Statistics. Statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law. Goods and services financed by general government are missing for Chile in 2000. 2000 data for Turkey are missing and this country is not included in the average (OECD33). Australia, Japan, Korea, New Zealand: 2008 instead of 2009. Mexico: 2003 instead of 2000.

Source: OECD, “Government at a Glance 2011”, *OECD Publishing*, Paris, 2011, http://dx.doi.org/10.1787/gov_glance-2011-54-en

OECD member countries increasingly and proactively disclose information – particularly information related to budget and accountability documents. Proactive disclosure of information refers to when information is made public at the initiative of the government (or individual public organizations), without any specific request from citizens. The opposite of proactive disclosure, reactive disclosure, is when a government makes information publicly available to an individual citizen only when that citizen specifically requests it. Table 1 presents information on what central governments in OECD member countries proactively disclose. It is common for governments to proactively disclose budget and accountability documents (i.e. annual ministry reports, including accounts) together with administrative data sets, internal government manuals and guidelines and audit reports -all of which can help to shed light on public procurement and enable citizen oversight.

OECD member countries increasingly and proactively disclose information directly linked to the pre-tender and tender phases of the procurement cycle. Proactive disclosure of information related to the pre-tender and tender phases of the procurement cycle are critical to support a level playing field for suppliers to compete for government contracts. This same disclosure of information also provides citizens with information to support their involvement in the oversight of government operations. Table 2 presents information on what national governments in OECD member countries make publicly available regarding public procurement. Laws and policies, general information for suppliers, select and award criteria, and contract award decisions are all common types of information regarding public procurement that are proactively disclosed. Areas in which governments could more proactively provide information include procurement plans and

TABLE 1. Proactive disclosure of information, National government, 2010

	Description of the structure & function of government institutions	Budget documents	Commercial contracts over a stipulated threshold	List of public servants and their salaries	Information describing the types of records systems and their contents & uses	Administrative data sets	Information on internal procedures, manuals & guidelines	Annual ministry reports, including accounts	Audit reports	All government policy reports	FOI procedural information	Annual report on FOI
Australia	●	○	○	○	●	○	●	●	○	○	●	○
Austria	○	○	○	○	○	○	○	○	○	○	○	○
Belgium	●	○	○	○	○	○	○	○	○	○	○	○
Canada	●	●	●	○	●	○	●	●	●	○	○	●
Chile	●	●	●	●	○	○	○	○	●	○	○	○
Czech Republic	●	●	○	○	○	○	●	●	○	○	●	●
Denmark	○	○	○	○	○	○	○	○	○	○	○	○
Estonia	●	●	●	●	●	●	●	●	●	●	●	●
Finland	○	●	●	○	●	●	○	●	●	●	●	○
France	●	●	○	○	○	○	○	●	○	○	●	●
Germany	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Greece	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Hungary	●	●	●	○	●	●	●	●	●	●	●	●
Iceland	○	○	○	○	○	○	○	○	○	○	○	○

	Description of the structure & function of government institutions	Budget documents	Commercial contracts over a stipulated threshold	List of public servants and their salaries	Information describing the types of records systems and their contents & uses	Administrative data sets	Information on internal procedures, manuals & guidelines	Annual ministry reports, including accounts	Audit reports	All government policy reports	FOI procedural information	Annual report on FOI
Ireland	●	○	○	○	○	○	○	○	○	○	○	●
Israel	●	●	○	○	○	○	●	●	○	○	●	●
Italy	●	●	●	●	○	○	○	●	●	●	●	●
Japan	○	○	○	○	○	○	○	○	○	○	○	○
Korea	●	●	●	○	●	●	●	●	●	●	●	●
Luxembourg	○	○	○	○	○	○	○	○	○	○	○	○
Mexico	●	●	●	●	●	○	●	●	●	●	○	●
Netherlands	○	○	○	○	○	○	○	○	○	○	○	○
New Zealand	○	●	●	○	○	○	○	●	○	○	●	●
Norway	○	○	○	○	○	○	○	○	○	○	○	○
Poland	●	○	○	○	○	●	○	●	○	○	●	○
Portugal	●	●	●	○	●	○	●	●	●	○	○	●
Slovak Republic	●	●	○	○	○	○	○	○	○	●	●	○
Slovenia	●	●	○	○	●	●	●	●	●	●	●	●
Spain	●	●	●	○	○	○	●	●	●	○	○	○
Sweden	○	○	○	○	○	○	○	○	○	○	○	○
Switzerland	○	○	○	○	○	○	○	○	○	○	○	○
Turkey	●	●	○	●	●	○	○	●	●	○	●	●
United Kingdom	○	○	○	○	○	○	○	○	○	○	●	●
United States	●	○	○	○	●	○	●	○	○	○	●	●

TOTAL OECD32												
● Required to be proactively published by FOI law	19	17	11	5	11	6	12	17	12	8	16	16
○ Not required by FOI law, but routinely published	11	13	5	4	11	15	10	10	11	10	12	7
○ Neither required nor routinely published	2	2	16	23	10	11	10	5	9	14	4	9

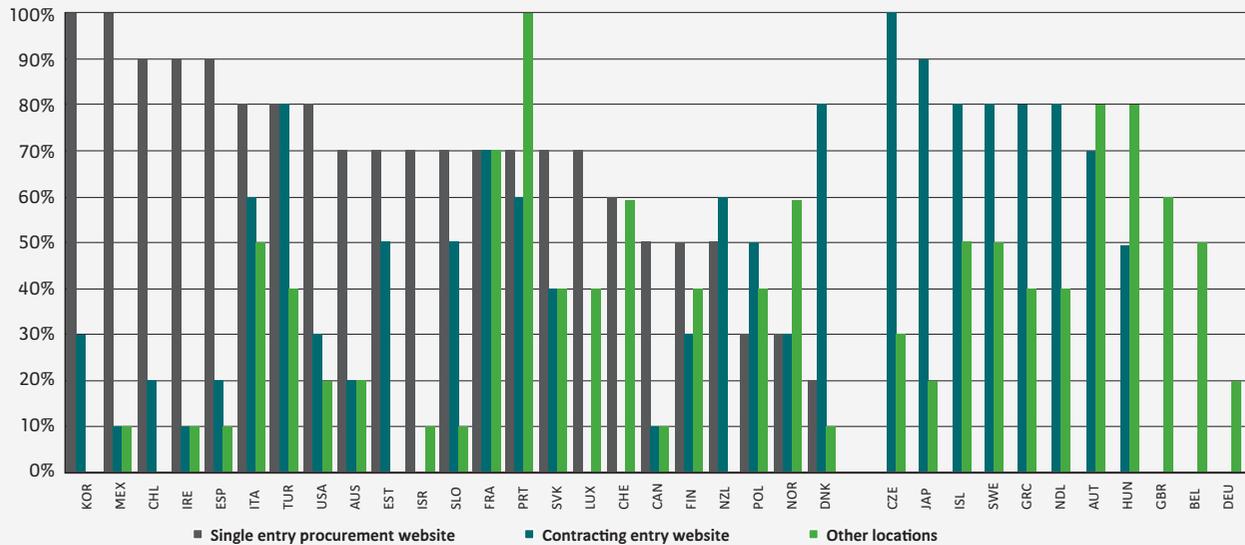
Notes: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law. Data are not available for Germany and Greece. Luxembourg is currently drafting laws on access to information. Some categories of information are required to be disclosed by laws other than FOI. Austria: Freedom of information procedures are required to be published by the general law for administrative procedures. Chile, Estonia and Israel publish information on the salaries of all public servants, whereas Hungary, Italy, Mexico, the Netherlands, Turkey and the United Kingdom publish salary information for some public servants, such as managers who earn at the top of salary scales.

TABLE 2. Public availability of procurement information, National government, 2010

	Laws & policies	General information for potential bidders	Selection & evaluation criteria	Contract award	Specific guidance on application procedures	Tender documents	Procurement plan of anticipated tenders	Justification for awarding contract	Contract modifications	Tracking procurement spending
Australia	●	□	□	●	□	□	●	■	□	○
Austria	●	□	□	□	□	□	□	○	□	○
Belgium	●	●	●	●	●	●	●	●	●	○
Canada	●	●	■	●	●	■	○	■	●	○
Chile	●	●	□	●	●	●	●	●	□	●
Czech Republic	●	●	●	●	●	●	□	□	□	□
Denmark	●	●	□	□	□	□	●	□	□	○
Estonia	●	●	●	●	●	■	●	●	■	●
Finland	●	●	●	●	□	■	□	●	○	○
France	●	●	●	□	●	□	□	■	●	■
Germany	●	●	□	□	○	□	○	○	○	○
Greece	●	●	●	●	□	●	□	●	○	○
Hungary	●	●	●	●	●	●	●	●	●	●
Iceland	●	●	●	●	●	●	●	●	●	■
Ireland	●	●	●	□	□	●	●	□	□	○
Israel	●	□	●	□	□	●	□	■	●	○
Italy	●	●	●	●	●	●	●	■	●	■
Japan	●	●	●	●	●	●	●	●	●	■
Korea	●	●	●	●	●	●	●	●	●	●
Luxembourg	●	●	●	□	□	●	□	■	■	□
Mexico	●	●	●	●	●	●	●	●	□	●
Netherlands	●	□	□	□	□	□	□	□	□	○
New Zealand	●	■	●	●	■	●	●	■	■	○
Norway	●	□	□	□	□	■	●	■	■	■
Poland	●	●	●	●	●	●	●	●	■	○
Portugal	●	□	□	□	□	□	□	□	□	□
Slovak Republic	●	●	●	●	●	■	□	○	●	○
Slovenia	●	□	□	□	□	□	□	■	□	■
Spain	●	●	●	●	●	●	●	●	●	○
Sweden	●	●	□	□	●	□	□	□	○	○
Switzerland	●	●	●	●	●	●	○	●	○	□
Turkey	●	●	●	●	●	●	□	■	■	●
United Kingdom	●	●	○	●	●	○	●	□	○	○
United States	●	●	□	□	□	□	□	○	■	□
Total OECD34										
● Always	34	26	21	21	19	18	17	13	11	6
■ Upon request	0	1	1	0	1	5	0	10	7	6
□ Sometimes	0	7	11	13	13	10	14	7	10	5
○ Not available	0	0	1	0	1	1	3	4	6	17

 Source: OECD, "Government at a Glance 2011", OECD Publishing, Paris, 2011, http://dx.doi.org/10.1787/gov_glance-2011-54-en

FIGURE 2. Online availability of public procurement information, National government, 2010



Notes: Figure represents the percentage of public procurement information publicly available (always or sometimes) on: laws and policies; general information for potential bidders; specific guidance on application procedures; procurement plans; tender documents; selection and evaluation criteria; contract award; justification for awarding a contract; contract modifications; tracking procurement spending; and other data. Information made public upon request is not included. Other locations include domestic printed/electronic journals, international central websites and other websites. Statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: OECD, "Government at a Glance 2011", OECD Publishing, Paris, 2011, http://dx.doi.org/10.1787/gov_glance-2011-54-en

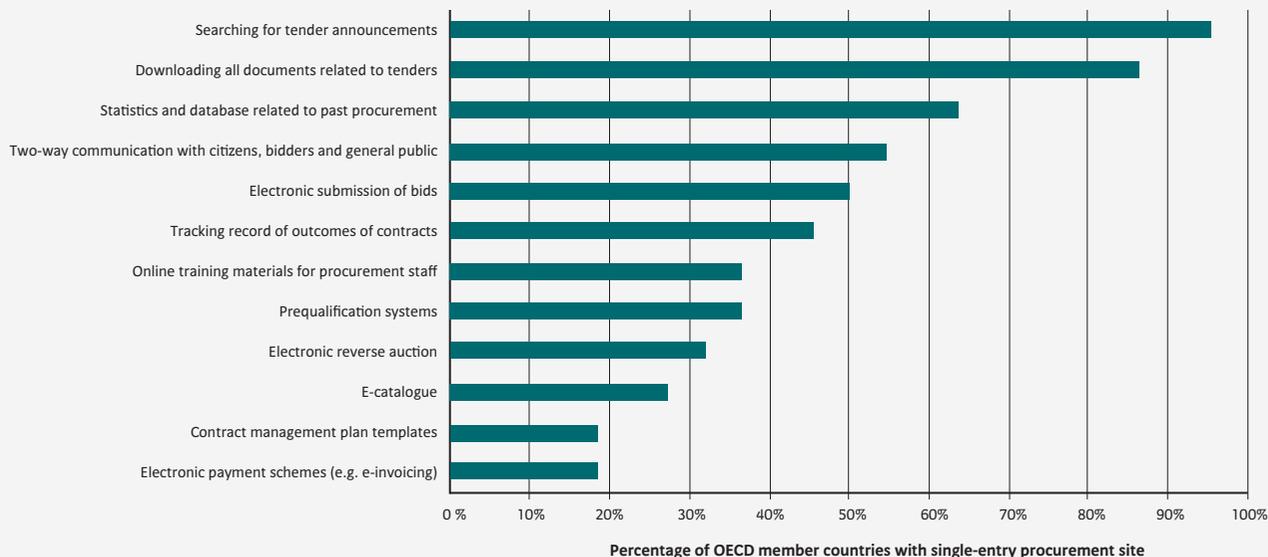
contract modifications. Only a few countries (including Chile and the United States) provide an easy and accessible method for citizens to track procurement expenditure.

Information on public procurement is made available through electronic portals, though not always through a single portal. Countries are increasingly using new and innovative ways to be in contact not only with potential suppliers but also with the wider public. More and more countries have decided to use a single entry website – for example, Korea’s KONEPS (Korea ONline E-Procurement System), Mexico’s Compranet, ChileCompra or Italy’s Government Procurement Platform – to allow suppliers to find information in a single place. These electronic portals not only provide information on procurement laws and procedures but also support direct interaction between government and suppliers. Although the benefits of a single entry website are still in debate, it is clear that due to the reach of the internet, e-procurement systems have become an essential tool for governments.

Few OECD member countries directly involve citizens in the procurement process in high-value or complex procurements that entail risks of mismanagement and corruption.

One example of direct involvement of citizens in overseeing public procurement can be found in Mexico. Since 2004, the federal government of Mexico has required the involvement of social witnesses in public bidding exceeding MXN 299.1 million (US \$21.5 million) for goods and services and MXN 598.2 million (US \$43 million) for public works. Non-government organizations and individuals may be selected as social witnesses by the Ministry of Public Administration. Their function is to propose strategies for improving transparency, impartiality and compliance with the legal framework, and must denounce any improper or illegal acts they observe. In 2010, social witnesses participated in over 120 public procurements valued at approximately MXN 180 000 billion (US \$14 billion). Recently, a number of Mexican public organizations have established memorandums

FIGURE3. Most common services offered by the single-entry procurement website, 2010



Notes: Percentage of 22 OECD countries that have a single-entry website.

Source: OECD, "Government at a Glance 2011", OECD Publishing, Paris, 2011, http://dx.doi.org/10.1787/gov_glance-2011-54-en

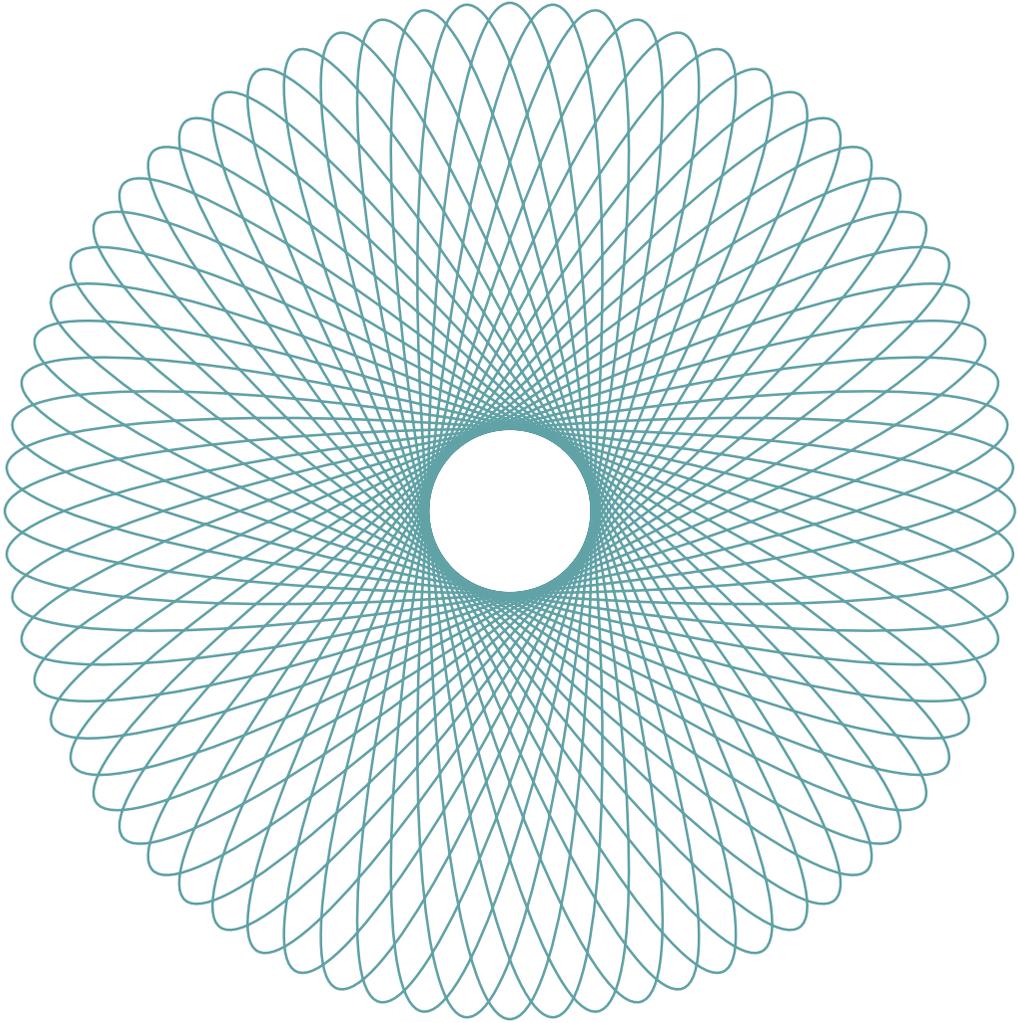
of understanding in order to engage universities and research institutions in reviewing procurement documents.

Conclusions

Providing an adequate degree of transparency is a critical basis for effectively engaging citizens in public procurement. Based on the trends identified in this paper, there are a number of issues that could improve transparency – and citizen engagement – in public procurement in OECD member countries. First, greater emphasis could be placed on proactively disclosing information on postaward stages of the procurement cycle, such as contract amendments and actual procurement spending. Second, greater emphasis could be placed on making information on public procurement available through a centralized portal rather than separate and disparate government portals. In both cases, the experiences of OECD member countries from the Americas are of much interest, including those of Chile, Mexico and the United States. A third issue, and an additional caveat of this paper, is that there be much greater focus on simply the proactive disclosure of information rather than the accessibility and usability of public procurement information disclosed by government.

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Civil Society Procurement Monitoring: Challenges and Opportunities

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ABSTRACT

The article aims to provide a general overview of the involvement of civil society organizations and citizens in public procurement. It analyses the main challenges and opportunities arising from civil society procurement monitoring including: the advantages and disadvantages of an explicit monitoring mandate for civil society in procurement legislation; the challenges and opportunities connected with different levels of access to procurement information across countries; the main problems and possible solutions in raising funds to support civil society procurement monitoring; the various monitoring techniques and how CSOs can select what projects to monitor; the problems connected with monitoring projects that require high levels of technical expertise, such as complex infrastructure contracts. The article points out some best practices in civil society procurement monitoring, based on existing experiences, common mistakes and success stories.

Introduction

A significant amount of public funds in almost every country in the world is spent on acquiring goods and services through public procurement. Procurement of goods, works and services by public entities alone amounts on average to between 15 and 30 percent of gross domestic product (GDP).¹ Given the large amounts of funds, and often the levels of discretion and bureaucracy involved, procurement is very vulnerable to corruption. This is also the most egregious form of corruption, as it directly affects citizens' access to basic services, utilities, infrastructure and health-care. Recent scandals in several countries across the globe continue showcasing both the vulnerability of procurement to corruption and the scale of its costs to citizens.

Take the recent Commonwealth Games scandal (though eclipsed by the 2G scandal) which dominated the airwaves in India in 2010 and 2011.² According to a recent Comptroller and Auditor General of India report, India's state auditor found serious bidding irregularities: many contracts were awarded after single bids, while some were handed out on a "nomination basis," without any competition. It was observed in this report that "appropriate

1 TI, "Curbing Corruption in Public Procurement", *Transparency International*, 2006, http://www.transparency.org/publications/publications/other/procurement_handbook

2 India's telecommunications ministry caused nearly US\$40 billion in losses to the exchequer by selling the licenses at 2001 prices and by conducting the sale on a so-called first-come, first-served basis (as opposed to auctions) to benefit a few select bidders, according to an audit by India's Comptroller and Auditor General (CAG). *India Knowledge@Wharton*, "India's 2G Telecom Scandal Spans the Spectrum of Abuse", *India Knowledge@Wharton*, 2 December 2011, <http://knowledge.wharton.upenn.edu/india/article.cfm?articleid=4549>

due diligence was conspicuously absent at all levels."³ The games cost US\$4.1 billion instead of the US\$270 million first estimated.⁴

In another example, the Philippines' Commission of Elections (COMELEC) in 2010 procured thousands of collapsible voting booths for upcoming elections. The specifications for the voting booths were extremely complex, much more so than those used in previous elections.⁵ Because of these complex specifications, the booths were procured at a cost that far exceeded market price (PHP 380, US\$ 8.90) under a negotiated contract that dispensed with competitive bidding precisely because of the unique specifications of the items procured: a clear indication of collusion between public officials and the winning bidder.⁶ The scandal resulted in significant additional costs for taxpayers and eventually the responsible officials were suspended without pay by the Office of the Ombudsman.⁷

In the U.S., a recent corruption scandal concerning the Army Corps of Engineers was called by prosecutors "one of the most audacious contracting scams in U.S. history."⁸ Four men—two of them program managers at the Corps—were indicted for allegedly filing inflated invoices for

3 Supreme Audit Institution of India, "Report No. - 6 of 2011-12 for the Period Ended March 2011 - Performance Audit of XIXth Commonwealth Games 2010", *Comptroller and Auditor General of India*, November 2011, http://saiindia.gov.in/english/home/Our_Products/Audit_Report/Government_Wise/union_audit/recent_reports/union_performance/2011_2012/Civil_%20Performance_Audits/Report_No_6_CWG/Report_no_6_CWG.html

4 BBC, "Auditor slams Delhi Commonwealth Games preparations", *BBC News South Asia*, 5 August 2011, <http://www.bbc.co.uk/news/world-south-asia-14424311>

5 Measuring 28 inches long, colored royal blue, made of polypropylene plastic instead of the usual cardboard. The numbers required also far exceeded actual needs.

6 Inquirer.net, "A Typical Scam", *Philippine Daily Inquirer*, 6 April 2010, <http://opinion.inquirer.net/inquireropinion/editorial/view/20100406-262722/A-typical-scam>

7 Edu Punay, "CA Affirms Suspension of COMELEC Officials in Folder Scam", *The Philippine Star*, 20 January 2010, <http://www.philstar.com/Article.aspx?articleid=649739&publicationSubCategoryid=63>

8 Del Quentin Wilber and Mary Pat Flaherty, "Three Men Held in Jail for Massive Corps of Engineers Contracting Scam", *The Washington Post*, 6 October 2011, http://www.washingtonpost.com/local/three-men-held-in-jail-for-massive-corps-of-engineers-contracting-scam/2011/10/06/gIQAk2tMRL_story.html

federal contracting services and reaping the “overhead,” which amounted to approximately US\$20 million. They allegedly used the money to purchase luxury cars, jewelry, flat-screen televisions, first-class airline tickets and properties across the world. Prior to their arrest, the men allegedly had their sights on another government contract worth US\$780 million.

Given the fact that citizens are directly affected by inefficiency and corruption in public procurement, it follows that monitoring by civil society is essential to prevent the leakage of funds and also to push for reforms. Indeed, several Transparency International (TI) chapters and other civil society organizations (CSOs) around the world are involved in the monitoring of procurement or promoting the use of TI’s “Integrity Pacts,” in order to prevent, detect and expose corruption.⁹ These efforts are not without many challenges, including legal mandate, financial resources, technical expertise and access to information. This article explores these challenges through concrete experiences of some of CSOs that have successfully tackled them, and highlights some best practices and lessons learned.¹⁰

Some of the ideas that follow are the result of numerous conversations and exchanges TI-USA has had with CSO experts and procurement practitioners in the last two years, while working on the design of a forthcoming online tool to support procurement monitoring by civil society. This effort has highlighted the numerous challenges that procurement monitors face as well as the clever strategies CSOs all over the world have adopted to overcome them. TI-USA believes it is important to disseminate these lessons learned to the benefit

of those who want to take on the challenge of procurement monitoring.

Mandate - What Are the Advantages of an Explicit Mandate?

A precise legal mandate for civil society participation in monitoring government procurement, while not a necessary precondition, is certainly a strong incentive. It provides some guarantee that the monitors will be granted access to information and that their involvement will be respected and facilitated by both government officials and bidders. Very few countries worldwide have legislation explicitly allowing for procurement monitoring by civil society. The Procurement Law of the Philippines (Republic Act 9183, Section 13), approved in 2003, is one of the very few pieces of legislation in the world that explicitly recognize the status of “non-government organizations” as official observers in public procurement. In Mexico, following amendments to the procurement law in 2009, procurement monitoring under the “Social Witnesses” program, pioneered by *Transparencia Mexicana*, is “legally required in major procurements [...] or when the impact on the key programs of the agency or entity involved so warrants, and if so mandated by the Ministry of Public Administration.”¹¹ The Social Witness program has significantly reduced the costs of public contracts and has increased the number of bidders participating in the procurement process in Mexico. The social witness selected by *Transparencia Mexicana* is an independent and respected technical expert in the field who acts as an external observer of the procurement process. The social witness works

9 An Integrity Pact is “[...] essentially an agreement between a government or government department (at the national, sub-national or local level) and all bidders for a public contract. It stipulates rights and obligations to the effect that neither side will: pay, offer, demand or accept bribes; collude with competitors to obtain the contract. For additional information visit: www.transparency.org/global_priorities/public_contracting/integrity_pacts

10 Our gratitude to Anupama Jha, Executive Director of TI-India, and Carole Belisario, Supervising Technical Officer of Procurement Watch Inc, for their invaluable support in preparing this article, which draws broadly from their experiences with monitoring procurement. We also thank Lesley Dickson and Sheena Townsend, Legal Fellows at TI-USA, for their research assistance.

11 The “Social Witness” program is “the result of an initiative of *Transparencia Mexicana* to facilitate the participation by civil society as external observers in public procurements. Originally, social witnesses participated as a result of guidelines issued by Ministry of Public Administration (MPA) in 2004. The guidelines stipulated that MPA keep a registry of individuals and non-governmental organizations which may participate in all stages of a procurement conducted by any institution of the Federal Public Administration.” “APEC Procurement Transparency Standards in Mexico”, *Transparency International USA, CIPE, Transparencia Mexicana*, 2011, <http://www.transparency-usa.org/documents/MEXICOCIPETIReportFINAL-June2011.pdf>

with the procuring agency to, among other things, design the terms of the tender and issue the award notice.¹²

On the other hand, in many countries, such as India, while there is no explicit mandate, there is nothing in the procurement law prohibiting civil society from monitoring procurement.¹³

Having said that, in countries where procurement legislation is under review, CSOs that are or plan to be engaged in procurement monitoring should consider advocating strongly in favor of the inclusion of an explicit mandate in the relevant law(s), as it makes access to information and monitoring in general easier and safer.

Access to Information: Challenges and Opportunities

Adequate access to procurement information is one of the most important, if not the most important pre-condition for procurement monitoring. While some monitoring can be conducted even in a hostile environment with scarce information, only access to key documents such as technical specifications and award notices puts citizens and CSOs in a position to detect corruption and fraud.

Worldwide, access to information conditions vary widely.¹⁴ In some countries, access to information laws cover more or less explicitly procurement information, while in other countries procurement laws dictate which documents of the procurement cycle should be made available to the public and which should remain confidential or accessible only to bidders.

Even when an access to information law exists or when a procurement law provides for access to certain documents, this is not a sufficient guarantee that information will be available. Some access to information laws lack teeth, and in some cases government

agencies may lack the will, resources or training to make relevant information available in a timely manner.

CSOs have developed several strategies to deal with poor access to information. For example:

1. Some CSOs have developed monitoring strategies that focus on the delivery of goods and the completion of works at the local level. These monitoring strategies require little information, compared to more comprehensive monitoring activities, and can be effective in environments with low levels of access to information. As an example, monitoring the delivery of goods requires access to technical specifications and contracts (to verify quality), but not to documents from the bidding and evaluation phases.¹⁵ Furthermore, when no information at all is available, monitoring can be limited even further, to documenting (for instance taking pictures) works that are blatantly incomplete or defective, thus reducing virtually to zero the amount of information needed from the procuring agency.¹⁶
2. In countries where access to information laws exist but are not implemented, CSOs or private citizens that monitor procurement and face a lack of relevant information can file Freedom of Information requests with the information commission (if one exists) or with the relevant regulatory entity.
3. CSOs may also consider signing memoranda of understanding with the government agencies they intend to monitor, to ensure appropriate access to project cycle documentation. Such a strategy has been successfully adopted by Procurement Watch Inc. (PWI) in the Philippines and Trans-

12 Joanne Caddy, Tiago Peixoto and Mary McNeil, "Beyond Public Scrutiny: Stocktaking of Social Accountability in OECD Countries", *World Bank Institute*, 2007, <http://www.oecd.org/dataoecd/43/3/38983242.pdf>

13 Authors' conversation with TI-India's Executive Director Anupama Jha

14 Norah Mallaney, "Freedom of Information, a Comparative Study", *Global Integrity*, 19 March 2009, www.globalintegrity.org/node/380

15 "Bantay Eskuwela", in the Philippines, is an excellent example of sophisticated and well organized monitoring of procurement of delivery of school furniture and books that requires access to technical specifications, to be carried out appropriately. See: <http://www.youtube.com/watch?v=mDAmOLSmCOM>. Also see footnote 22.

16 Contains examples of how to collect photographic evidence of defective projects: WB, "Detailed Implementation Review: India Health Sector", *The World Bank*, December 2007, http://www.u4.no/pdf/?file=/document/literature/WB250_Vol1_Web_011508.pdf

parency International Pakistan.¹⁷ Its main weakness is that it relies on the government agency's willingness to share information and be open to monitoring.

4. When projects are funded by multi- or bilateral donors, CSOs can rely on their disclosure policies to obtain access to relevant information. For example, the World Bank Policy on Access to Information dictates that certain documents, such as procurement plans, are provided to the Bank by the borrowing government "with the understanding that the Bank will make them available to the public."¹⁸ All the main development banks have similar disclosure policies. Additionally, some development banks have procurement portals that store procurement plans, contract awards notices and other relevant information.¹⁹
5. When institutions do not respond to requests, and access to a particular set of documents is considered vital, CSOs may consider reaching out to the media to exert pressure on the procuring entity to ensure that the relevant information is made public. This strategy would be most effective for procurement processes that are likely to attract the attention of the general public, such as large infrastructure projects, concessions or purchases of medicines.

In recent years, the development of government managed e-procurement systems has created conditions that, on paper, should facilitate access to information and therefore procurement monitoring, by providing online platforms where all relevant information on procurement

processes can be stored and accessed. Unfortunately, both anecdotal evidence and more careful analysis indicate that this is not always the case. Consider the examples below.

1. Procurement authorities can decide to limit access to e-procurement websites to registered government suppliers. The e-procurement website of the Philippines (PHILGEPS), for instance, makes procurement and award notices available to all users, but requires registration for access to bidding documents.²⁰ While this constitutes a major obstacle to procurement monitoring, CSOs in the Philippines have been able to secure special registration rights for civil society, which grant them full access to the e-procurement website, even without being government suppliers.²¹

Procurement monitoring is a complex exercise and requires an understanding of procurement processes and various monitoring techniques, as well sector-specific knowledge

2. E-procurement can also be fragmented through different websites, particularly in countries with complex administrative structures and strong regionalization. This can be a major obstacle to monitoring, as CSOs have to watch multiple websites. This increases the likelihood that some procurement processes may go unnoticed and unmonitored, particularly in the initial phases, which are extremely vulnerable to corruption. For CSOs, ways to deal with this fragmentation include creating partnerships with local CSOs to cover local procurement

¹⁷ Authors' conversation with PWI's Supervising Technical Officer Carole Belisario; A list of current MoUs is available on TI-Pakistan's website at <http://www.transparency.org.pk/prog/ongoingprograms.php#1>

¹⁸ WB, "Access to Information Policy", *The World Bank*, 1 July 2010, http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/06/03/000112742_20100603084843/Rendered/PDF/548730Access011y0Statement01Final1.pdf. See particularly page 9 and footnote 18.

¹⁹ For example see: IDB Procurement Portal, <http://www5.iadb.org/idbppi/asp/ppProcurement.aspx>. World Bank Contract Data Database, <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,contentMDK:20376740~menuPK:51565~pagePK:41367~piPK:279616~theSitePK:40941,00.html><http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,menuPK:7612984~pagePK:7323671~piPK:7323669~theSitePK:40941,00.html>

²⁰ This is not an anomaly, as in many countries bidding documents have to be purchased.

²¹ Authors' conversation with PWI's Supervising Technical Officer Carole Belisario.

and developing strong relationships with key officials at government agencies, who can provide notice when important procurement advertisements are posted.

CSOs that successfully monitor procurement have to be flexible and have to adapt their strategies to the contexts and circumstances of the country in which they operate

Technical Resources

A major stumbling block for CSOs engaged in monitoring is the availability of resources. Procurement monitoring is a complex exercise and requires an understanding of procurement processes and various monitoring techniques, as well sector-specific knowledge. A familiarity with the red flags of corruption, related corruption schemes, and forensic investigation techniques are all also essential. Further, CSOs also need country/region specific knowledge and expertise on how to access the information needed, on what to do when they find red flags, and on what are the safe avenues available for reporting anomalies. Large-scale infrastructure projects normally require technical expertise (whether engineers or architects) to analyze the technical specifications and monitor contract implementation.

CSOs have developed different approaches to deal with insufficient technical expertise. For example:

1. Some organizations, particularly in the Philippines, rely on partnerships with universities that in turn require engineering or architecture students to participate in the monitoring of infrastructure projects as part of their curricula. Similar approaches include partnering with retired government officials or experts from professional or industry associations willing to volunteer their time.

2. As noted above, an alternative strategy would be to focus on the types of monitoring that require limited technical expertise, such as the monitoring of the delivery of goods at the local level. In these cases, CSOs can involve and train local communities.
3. CSOs can also develop sector-specific technical expertise over time, in response to the vulnerability of certain sectors to corruption, and leverage it over time for procurement monitoring purposes. For example, Transparency International South Korea has led efforts to increase transparency in the defense sector, which ultimately resulted in civil society participating in the monitoring of defense procurements alongside the Defense Acquisition Program Administration.²² Similarly, Poder Ciudadano (the Argentine chapter of Transparency International) has over the years developed specific expertise in the solid waste collection sector, traditionally vulnerable to corruption, which resulted in procurement monitoring agreements with municipalities across the country.²³
4. Finally, several CSOs have developed or are developing tools aimed at sharing and improving technical capacity. PWI routinely trains other organizations in monitoring public procurement in the Philippines. TI has also developed several corruption and fraud related tools, available on its website. TI-USA is currently contributing to the development of technical expertise by developing a web-based tool to help civil societies recognize the red flags of corruption and aims to launch this tool in 2012.

Financial Resources

Financial resources for procurement monitoring are scarce. Even when using volunteers, CSOs

²² ANSA-EAP, "ANSA-EAP Tales, Tools and Techniques in procurement Monitoring", ANSA-EAP, 2009, http://pro-act.org/page/ansaeap-theses-tools-and?xg_source=activity

²³ Information on the monitoring of waste collection contracts is available on Poder Ciudadano's website at <http://poderciudadano.org/2010/05/monitoreo-de-la-licitacion-de-residuos-en-la-ciudad-de-buenos-aires>

have expenses related to transportation, the hiring of experts, the training of monitors, the obtaining of access to bidding documents (although some governments make them available for free or at a lower fee for civil society) and more.

Usually, governments do not fund monitoring activities for CSOs, who are themselves generally reluctant to accept money from either governments or the private sector as they want to preserve their role as independent watchdogs and avoid any conflicts of interest. However the “Social Witness” program in Mexico, for example, includes non-discretionary public funding for monitors, coming from a public budget for the program.²⁴

While many donors do provide funding for procurement monitoring activities, funds are usually for specific projects, and do not guarantee long term sustainability. CSOs are exploring different funding schemes to overcome this shortage of funds. CSOs in the Philippines, for example, are currently exploring two key options, namely the establishment of a trust fund financed by international donors and managed by an independent party; as well as advocacy for the allocation of a fixed percentage of revenues from the purchase of bidding documents to monitoring activities.²⁵

Recommendations for Procurement Monitoring Strategies

Given these challenges, CSOs that successfully monitor procurement have to be flexible and have to adapt their strategies to the contexts and circumstances of the country in which they operate. As noted in the previous sections, thorough, document-based procurement monitoring is not always an option. A CSO may be lacking access to information, technical skills and the financial resources for complex proj-

ects, or may have difficulties setting priorities due to the overwhelming number of procurements to be monitored. Below are some examples of successful strategies that CSOs and private citizens have used to deal with challenges in monitoring procurement.

1. Some CSOs use the more “traditional” procurement monitoring method, which entails reviewing all available procurement cycle documents, attending all relevant meetings (when open to the public) and inspecting goods, works and services when completed or delivered. A common approach for this kind of monitoring requires applying a list of common red flags to facilitate the detection of corruption or fraud. While this can be hugely successful, the feasibility of this type of monitoring depends on a best-case scenario in which the monitoring individual or organization has the appropriate technical skills, expertise, resources and access to information.
2. If the situation is less than ideal, many CSOs opt for monitoring the delivery of goods or the completion of works at the local level. While this kind of monitoring is not always helpful in detecting corruption in the planning, bidding and evaluation phases, it does have a high impact as it ensures that the procured goods or works ultimately reach the intended beneficiaries in the appropriate quantity and quality. The Bantay Eskuwela program in the Philippines has perfected this kind of approach by involving local communities (including teachers, students, boy scouts and other volunteers) in counting books and school furniture, and verifying their quality.²⁶

²⁶ Bantay Eskuwela is an initiative of Procurement Watch, Incorporated (PWI). PWI signed a Memorandum of Agreement with the Department of Education (Deped) of the Philippines to conduct grassroots procurement monitoring. Because a significant part of Deped’s purchases are furniture and equipment, Bantay Eskuwela focuses on the procurement of school chairs and desks. Its objective is to safeguard both the quantity and quality of school furniture in public schools. Other examples of this kind of monitoring include the Khmer Institute for National Development scout monitoring of school facilities in Cambodia, ANSA-EAP “Tales Tools and Techniques in procurement Monitoring”, ANSA-EAP, 2009, http://pro-act.org/page/ansaeap-tales-tools-and?xg_source=activity

²⁴ Camara de Diputados del H. Congreso de la Union, “Ley de Adquisiciones, Arrendamientos y Servicios del Sector Publico”, *Diario Oficial de la Federación*, 4 January 2001, www.diputados.gob.mx/LeyesBiblio/pdf/14.pdf

²⁵ Authors’ conversation with PWI’s Supervising Technical Officer Carole Belisario.

3. In some countries, annual procurement processes number in the millions, and CSOs face the difficult task of selecting which processes to monitor. CSOs can:

a) focus on the sectors that are more vulnerable to corruption, based on their knowledge of corruption issues in the country. As an example, TI India focuses its monitoring on state-owned enterprises that have signed Integrity Pacts, as these companies are in sectors considered vulnerable to corruption, such as oil, gas and coal production;²⁷

b) focus on high-value procurement processes, although this approach may also require more specialized technical skills;

c) review projects based on information or tips received suggesting there may be corruption or fraud occurring in a certain procurement process. If the country context allows it, CSOs may consider establishing tip lines to receive allegations.²⁸ Of course, the individual monitor has to have the relevant expertise and tools to determine preliminarily which tips may have substance and whether the relevant procurement process deserves further attention.²⁹ Once a procurement process has been flagged as being at risk of corruption, CSOs can adopt other monitoring strategies (red flags approach, local monitoring) and look for patterns that suggest corruption may be occurring.

27 Authors' conversation with TI-India's Executive Director Anupama Jha.

28 Transparency International - Pakistan has established a joint anti-fraud hotline with USAID's Office of the Inspector General, <https://www.anti-fraudhotline.com>

29 One such tool is the "Start-Up Manual" developed by Transparency International for the Advocacy and Legal Advice Centers (ALACs), particularly sections 16 and 17. The manual can be requested on Transparency International's ALAC page at, http://www.transparency.org/global_priorities/other_thematic_issues/alacs. See also Transparency International, "Making Government Anticorruption Hotlines Effective", *Working Paper*, July 2009, http://www.transparency.org/publications/publications/working_papers/wp_07_2009_gov_ac_hotlines_09_dec_2009

4. The Integrity Pacts developed by TI are yet another tool at the disposal of CSOs and governments.³⁰ Because of the need for voluntary involvement of many actors, Integrity Pacts may not be applicable to all country contexts, but have so far been successful in countries such as Argentina, Colombia and Germany. Integrity Pacts have generally improved environments for access to information by CSOs and have been particularly effective in complex procurements, as one of their key components is the involvement of an independent expert who has sufficient expertise in the sector to monitor the process.

In conclusion, CSOs can combine these procurement monitoring approaches with more general principles that have been shown to work in most countries: working in coalition with other CSOs and stakeholders; constantly raising awareness about corruption in procurement; and strongly advocating for reforms at the country level.

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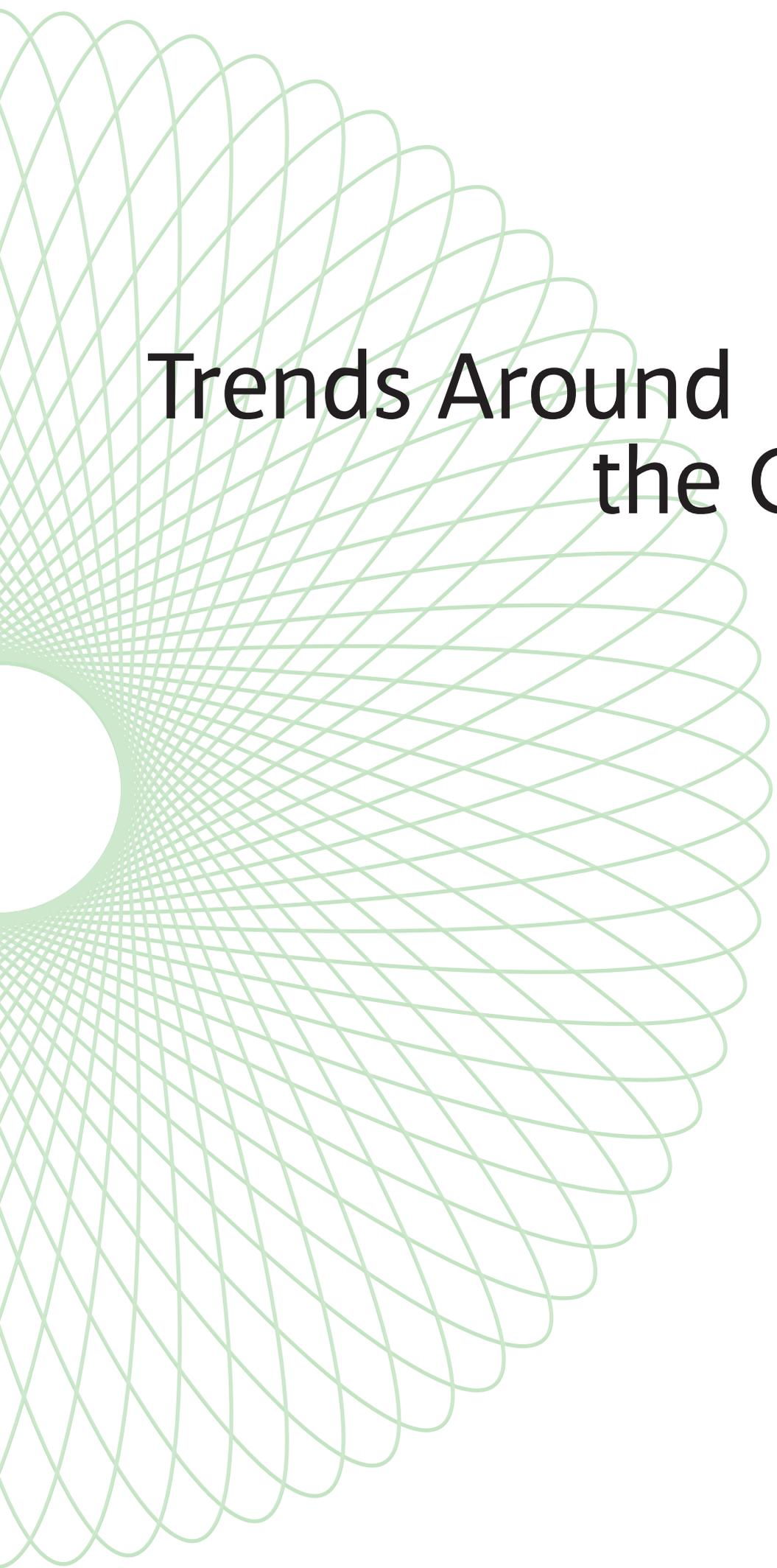
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EDWARD ODHIAMBO OKELLO » ADVOCATE OF THE HIGH COURT OF KENYA AND LEGAL OFFICER, Ethics and Anti-Corruption Commission, Kenya

ABSTRACT

Public procurement is at the heart of good governance worldwide. A sound and transparent public procurement process can spur economic and social development. Public procurement in Kenya, like in other countries, constitutes a substantial percentage of the national budget. Given the size of the financial expenditure for procurement in Kenya, the Government has initiated policy, legal and institutional reforms aimed at improving procurement governance in the public sector. One of the areas of focus in the procurement governance reforms has been the public participation in the public procurement process. While the reforms have significantly improved procurement governance, they have not adequately provided for public participation in the process. As such, the public has in response adopted social accountability mechanisms to monitor and enhance governance in the procurement process. The main social accountability mechanisms that have been successfully adopted include the social audits, citizens report cards, community empowerment programs and judicial and administrative processes.

Introduction

Public procurement is a key aspect of governance globally. It is increasingly receiving the attention of governance practitioners including state and non-state actors, development partners and the public. According to a conservative estimate by the Organisation for Economic Co-operation and Development (OECD) Development Assistance Committee (DAC), the volume of the global public sector procurement in 2003 stood at eight percent (US\$3.2 trillion) of the worldwide gross domestic product (GDP) of US\$40 trillion.¹ This figure has increased with the most recent literature on public procurement indicating that it constitutes the largest domestic market worldwide amounting on average to between 15 percent and 30 percent of the global GDP with some developing countries registering even higher percentages.²

1 OECD/DAC, "Mainstreaming the Procurement Function into the Public Expenditure Policy and Effectiveness Dialogue." *World Bank Roundtable in Paris*, France, 22 and 23 January 2003. Available at www.oecd.org

2 Arnaiz, T.M. "EU Directives as Anti-Corruption Measures: Excluding Corruption-Convicted Tenderers from Public Procurement Contracts" in Thai K.V. (ed). *International Handbook of Public Procurement*, London/New York: CRC Press, p. 107, 2009; See also Transparency International, *Handbook for Curbing Corruption in Public Procurement*, Berlin: Transparency International, 2006; Nicol, W. "Mainstreaming the Procurement Function into the Public Expenditure Policy and Effectiveness Dialogue," A Paper presented at the World Bank Roundtable in Paris, France, 22nd and 23rd January 2003. An earlier report by the OECD in 2002 had estimated the volume of public procurement in developing countries at 16 percent on average, and the total global public procurement at roughly the equivalent of 82.3 percent of world merchandise and commercial services exports in 1998. The report also found that the value of contestable procurement markets worldwide was over US \$2,083 billion, an equivalent of seven percent of the world's GDP and 30 percent of the world merchandise and commercial services exports in 1998. See the OECD, "The Size of Government Procurement Markets," (2002), OECD, 25.

In Kenya, public procurement has grown in leaps and bounds over the past two decades to become the epitome of government spending and the fulcrum of socio-economic development, accounting for over 26.3 percent of the country's GDP in the 2007/08 Financial Year.³ Indeed, it is estimated that about 65 percent of government revenue in Kenya is spent on procurement.⁴ Given the size of public procurement in Kenya, coupled with procurement related scandals, the government decided to initiate reforms through policy, legal and institutional frameworks to enhance transparency, accountability, fairness and competition in the procurement process.⁵ The measures also introduced accountability through the monitoring of procurement processes by state and non-state actors, including public participation. This paper examines the extent to which public participation in public procurement in Kenya has improved governance in the procurement process. It discusses the citizen-initiated mechanisms that have been applied and the extent of the successes so far achieved.

Public Procurement in Kenya: The Policy, Legal and Regulatory Frameworks

A number of legal instruments provide the basis for public procurement in Kenya. At the pinnacle is the Constitution of 2010, which seeks to enhance public participation in governance including the procurement of goods and services in the public sector. In particular, it requires public entities to contract goods and services in accordance with a system that is fair, equitable,

3 The Public Procurement Oversight Authority, "The Long-Term Policy Framework for Public Procurement in Kenya," 2009.

4 Kenya Alliance of Residents Association, "A research report on the involvement of the public in Public Procurement in Kenya's Local Authorities", 2010.

5 It is instructive to note that most of the big corruption scandals in Kenya in recent times such as Anglo-Leasing, Maize and Triton (Oil) have been procurement related. According to a public opinion conducted by Transparency International – Kenya Chapter in September 2003 titled 'Integrity Check,' 60% of the respondents stated that public procurement procedures were the key avenue for corruption in the government.

transparent, competitive and cost effective.⁶ It also provides for openness and accountability including public participation in financial matters, and requires that public funds be used in a prudent manner.⁷ Besides the Constitution, there is also the Public Procurement and Disposal Act of 2005 (“the Act”) and the operationalizing Regulations of 2006 and 2009. The Act is the primary law on public procurement in Kenya and provides the policy, substantive and institutional frameworks for public procurement. In particular, it creates an independent body, the Public Procurement Oversight Authority (PPOA), granting it the policy and oversight functions in the implementation of public procurement.⁸ Other bodies created include the Public Procurement Oversight Advisory Board to supervise PPOA and the Public Procurement Administrative Review Board to consider applications of aggrieved parties. Pursuant to the Act, PPOA developed a policy aimed at promoting transparency in public procurement in Kenya and obliged procuring entities “to the extent possible, make transparent their procurement proceedings.”⁹

Public Participation in Public Procurement in Kenya

Public participation in procurement is critical for a transparent, responsive, accountable and competitive procurement process. It is premised on the belief that those who are affected by public decisions and processes are entitled to be involved in such decisions and

processes. Participation also enhances the capacity of citizens to understand the operations of public entities and enables them to influence the development of projects within their localities. It also ensures ownership, builds trust, promotes accountability and strengthens the commitment of stakeholders towards improved governance. In the context of procurement, participation entails access to information and decision-making, monitoring of the procurement process and access to justice in case of disaffection with the process.¹⁰ While the public reforms in Kenya have significantly improved procurement governance, they have not adequately provided for public participation in the process. The lack of participation has been exacerbated by a culture of secrecy procurement, as captured by The Institute for Social Accountability (TISA), stating that:¹¹

The most persistent barrier to combating corruption is the culture of secrecy in public procurement and associated government functions

“The most persistent barrier to combating corruption is the culture of secrecy in public procurement and associated government functions (...) presently procurement records are held as confidential. In this way, tender and procurement agreements and operations are not open to public scrutiny, effectively locking out citizen oversight as envisioned in the public processes especially local governance such as Constituency Development Fund, Local Authority Transfer Fund, and so forth. For instance, procurement records such as work plans, contractor agreements, bills of quantity and so

6 Article 227(1) of the Constitution of the Republic of Kenya of 2010.

7 Article 201(a &d) of the Constitution of the Republic of Kenya of 2010.

8 The Public Procurement Oversight Authority is an independent body created by the Public Procurement and Disposal Act of 2005 to oversee public procurement activities in Kenya. It is headed by a Director-General who is competitively appointed by the Public Procurement Oversight Advisory Board comprising of nine members drawn from various professional bodies. The Authority is a body corporate with perpetual succession and powers to hire and fire staff independent of any organ of the government. Its independence is also ensured through financial and administrative autonomy in the execution of its mandate.

9 Public Procurement Oversight Authority, “Public Procurement and Disposal General Manual,” March 2009.

10 UN Habitat and Transparency International, “Tools to support transparency in local governance”, March 2004.

11 The Institute for Social Accountability, “Memorandum to the Public Procurement Oversight Authority,” June 2010.

forth are routinely withheld from the public undermining the public's ability to oversee local development projects some of which they proposed in the first place. Supplier information is maintained as confidential allowing government officials and politicians to conceal their interests in local contracting companies, in contravention of the Public Procurement and Disposal Act.”

There are no clear tendering and procurement guidelines and/or procedures and tenders are not usually advertised. This invites corruption through irregular award of tenders and nepotism

Most of the reforms largely addressed the conventional accountability mechanisms such as the political, legal, audit and administrative measures, leaving out the demand side accountability mechanisms. The inadequacies in the legal system in relation to public participation in the procurement process, coupled with the increasing role of demand side accountability mechanisms, have encouraged stakeholders, especially civil society and the public, to adopt social accountability mechanisms to monitor the public procurement process to ensure that it is executed in accordance with the law. Most of these mechanisms have focused on devolved funds, particularly the Constituency Development Fund (CDF) and Local Authority Transfer Fund (LATF).¹² In addition, some citizens have initiated cases in court to ensure accountability in the management of public funds at the local level. The Kenya Anti-Corruption Commission (now Ethics and Anti-Corruption Commission) has also recognized the role of citizens in governance and rolled

¹² Until the current Financial Year 2010/2011, CDF had been allocated a total of 4.5 (US \$50 million) billion shillings since inception in 2003 while LATF had a total of KSh. 57.5 (US \$635 million) billion shillings since 1999.

out programs aimed at empowering the public to participate in governance, especially in the management of public funds at the local level. The following are some of the citizen driven mechanisms that have been adopted in Kenya.

Devolved Funds: The Constituency Development Fund

The Constituency Development Fund (CDF) is a decentralized fund that was established in 2003 by the government through the Constituency Development Fund Act to uplift the standard of living of Kenyans at the constituency level.¹³ It is comprised of an annual budgetary allocation equal to 2.5 percent of the government budget with 75 percent of the Fund being allocated equally to all 210 constituencies in Kenya and the remaining 25 percent being allocated in accordance with constituency poverty levels.¹⁴ The Fund is used to finance community based projects in the areas of education, water and sanitation, health, infrastructure and poverty alleviation. The allocation for CDF makes it one of the main government initiatives to encourage grassroots participation that has high potential for direct local development and participation. The Fund is managed by the CDF Board, the Constituency Development Committee, the District Project Committee and the Constituency Fund Committee. Despite the popularity and objectives of the CDF, there have been concerns in the manner of its management, especially the procurement process.¹⁵ Its accountability structures are weak, particularly in relation to the procurement process, as noted by a report of the National Anti-Corruption Campaign Steering Committee (NACCSC), stating that:¹⁶

¹³ The Constituency Development Act Fund, Act No. 10 of 2003.

¹⁴ Section 4 of the Constituency Development Fund Act.

¹⁵ The Act bestows Members of Parliament with executive powers leading to unclear separation of powers. The administrative structures created are also weak which has resulted in weak enforcement of the law. Even where the rules are clear, there have been cases of blatant abuse of the procurement process in the implementation of the law by the constituency committees.

¹⁶ National Anti-Corruption Campaign Steering Committee, "The Constituency Development Fund: An Examination of Legal, Structural, Management and Corruption issues in Kenya," June 2008, 4.

“There are no clear tendering and procurement guidelines and/or procedures and tenders are not usually advertised. This invites corruption through irregular award of tenders and nepotism. The lowest bidder is not always awarded a contract and some contractors were said to be bribing key CDF Committee members to win tenders (...) in such underhand deals, some Committee members collude to win tenders then subcontract to their kin and kith. Usually, tender winners have the blessings of the sitting Member of Parliament or are given to his/her close relatives, friends or associates.”

Research conducted by the Kenya Institute for Public Policy Research and Analysis (KIPPRA) on the use of the Fund in eight districts concluded that there was lack of meaningful citizen participation in the management of the devolved funds.¹⁷ This was also noted by PPOA, which called for a participatory and all-inclusive approach and urged “the CDF Committees to empower the public with adequate information to enable them to not only measure and report its performance, but also own the projects.”¹⁸ Due to the lack of meaningful public participation in the procurement process in devolved funds, citizens and some civil society organizations have adopted social accountability mechanisms to empower citizens and also enable them to proactively and meaningfully participate in the management of the funds. This has been undertaken through mechanisms such as participatory expenditure tracking, social audits and citizens report cards. Through these undertakings, they have been able to create awareness and hold the duty bearers to account for their decisions and actions.

17 F. Owegi & E. Aligula, “Public Sector Procurement in Kenya: The Need for a Coherent Policy Network”, *KIPPRA Discussion Paper No. 62*, KIPPRA, December 2006; Devolved funds are funds that are channeled to the grassroots communities through fiscal decentralization to spur development at the grassroots level. Some of the devolved funds in Kenya include the Constituency Development Fund, Local Authority Transfer Fund, Constituency Bursary Fund, Free Primary Education Fund, National Fund for the Disabled People, Road Maintenance Levy Fund, Rural Electrification Levy Fund, Water Services Trust Fund, Constituency HIV/AIDS Fund, Secondary School Bursary, Women Enterprise Fund, Youth Enterprise Development Fund and Economic Stimulus Programme.

18 Ibid at 5.

Case Study I

The National Taxpayers Association is an association of citizens and civil society organizations whose aim is to improve service delivery and the management of devolved funds in Kenya. This initiative was born out of the dissatisfaction of citizens on the use of public funds. The Association has been able to undertake its work in over 82 constituencies and 15 local authorities by using the citizens’ report card tool to assess the overall management of devolved funds. The Association has a presence in all the eight provinces and constituencies across Kenya. The initiative entails seeking information on the allocation of fund work plans, minutes of various committees, actual visits to projects to ascertain progress and meetings with stakeholders including local leaders, community based organizations and citizens. In addition, project profiles are produced with information on the location, the funds allocated for each project and the progress made, and photos are taken for publication in a report that is finally forwarded to the relevant public agencies for action. The exercise has had immediate impact in the management of devolved funds, leading to increased public awareness and participation in the management of devolved funds; the unearthing of corrupt practices in the tendering and management of contracts; an enhanced public capacity to monitor public projects; the completion of some abandoned projects; and more transparency and accountability by the CDF Committees and local authorities.

Case Study II

The Institute for Social Accountability is a non-governmental organization whose goal is to enhance citizen participation and accountability in local governance in Kenya. The organization works through national advocacy, grassroots capacity building and research to inform policy. It mainly conducts social audits to enhance citizen participation and oversight in the management of devolved funds. In 2010, it conducted social audits of 72 projects in four constituencies in Nairobi, namely those of Embakassi, Kasarani, Langata and Westlands, and published a report in October 2010 calling for action in re-

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the public still face challenges in
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of public projects*

lation to the management of devolved funds in those constituencies.¹⁹ The report was validated through stakeholder meetings in which the local leaders and citizens in those constituencies participated. The organization also submitted a memorandum to the Public Procurement Oversight Authority on procurement and accountability of the CDF. As a result of the exercise, there has been increased accountability for the Members of Parliament whose use of the CDF has been audited. This has been the result of direct engagement with the public, citizen awareness and empowerment, enhanced capacity building among stakeholders in the management of devolved funds, the putting up of accountability boards to explain the CDF expenditure for every project and the recognition by national bodies of the roles and rights of citizens in monitoring local development.

Despite considerable success, the public still face challenges in their efforts to participate in the management of public projects. The challenges include difficulties in accessing information held by public officials, low volunteerism, an absence of follow-up of the profiled projects by the relevant government agencies, a lack of proper records for CDF projects, weak legislation, hostility and intimidation, a culture of impunity and a lack of sufficient resources.²⁰

19 The Institute for Social Accountability, "The Nairobi Social Audit," *TISA*, October 2010.

20 The right to access to information is provided for under Article 35 of the Constitution. Prior to the adoption of the Constitution on 27th August 2010, access to information held by public bodies was not provided for in Kenya and this hampered transparency and accountability in the management of public affairs. However, the full realization of this right has not been achieved due to absence of a specific Act of Parliament on access to information and the existence of Official Secrets Act (Chapter 187 of the Laws of Kenya) which has been used often to prevent public access to information held by public bodies.

Judicial and Administrative Redress

Judicial and administrative redress mechanisms have been invoked by citizens in cases where the conventional mechanisms have been ineffective. This mechanism is envisaged under both section 93(1) of the Public Procurement and Disposal Act, which provides for administrative review of the decisions of procurement entities in case of an irregularity in the process, and section 100 of the Act that provides for judicial review in the High Court. Despite the positive transformation, the Act does not allow for individuals who did not take part in procurement proceedings to lodge a complaint with the Public Procurement Administrative Review Board. The requirements for an application for review include, *inter alia*, that "one has to be a candidate as defined under section 3 of the Act," under which a candidate is defined as a person who has submitted a tender to a procuring entity. As such, a person who has not participated in a procurement process cannot lodge a complaint with the Board. This was the point in issue in a recently decided case involving the Kenya Medical Supplies Agency in which the Board dismissed an application on the grounds that it was lodged by a person who was not party to the procurement proceedings. An individual entitled to lodge a complaint can only do so with the law enforcement agencies such as PPOA and the Ethics and Anti-Corruption Commission (EACC).

In some instances, the public have successfully blown the whistle on irregularities in the procurement process with EACC and PPOA, leading to the suspension of the proceedings. Most of the cases reported to the Commission relate to irregularities in the procurement process, such as non-compliance with the procurement procedure, bid rigging, irregular award and management of contracts, inflated cost of goods and services and conflict of interest, among others.²¹ Due to the increasing number of complaints related to public procurement, the Commission adopted a strategy to detect and prevent corruption, taking

21 KACC Annual Reports, 2004 – 2010. Can be accessed from the Ethics and Anti-Corruption Commission Website at <http://www.eacc.go.ke/default.asp?pageid=20>

urgent appropriate action. This has led to the disruption of corruption networks, especially in procurement, leading to billions of shillings being saved.²² In one such case, a member of the public reported a case of an irregular procurement process at a tertiary institution leading to the suspension of a procurement contract. The contract had been awarded to a bidder who was ranked at number four in the evaluation stage and the Tender Committee had not met to award the contract as required by the procurement law.²³ In another case, citizens held a public demonstration against the Narok County Council, which had awarded a tender to one of the leading financial institutions in the country. Owing to the delay in processing the complaint, the citizens moved to the High Court and sued the financial institution and the Council, seeking to have the contract nullified and tendered afresh. The case is still pending before court.²⁴

One of the areas of robust action by citizens has been the court process where many have initiated private civil prosecutions. This has been primarily necessitated by the inaction on the reported cases by the competent

22 *ibid.*

23 The irregularity related to the procurement of consultancy services for the design of administration block at the institution which was awarded to a company which had been ranked at number four in the evaluation stage. A report of the irregularity was made to the Ethics and Anti-Corruption Commission and the Public Procurement Oversight Authority leading to the suspension of the contract pending the investigations.

24 The issue related to procurement of an agency to supply, install and commission a system of revenue collection at the Maasai Mara Game Reserve for the County Council of Narok. The residents of the Council raised issues on the manner in which the procurement process was conducted and further petitioned the Council, Ethics and Anti-Corruption Commission, Ministry of Local Government and the bidder, Equity Bank to cancel or suspend the contract. When they failed to have the contract cancelled or suspended, they moved to the High Court to stop its execution. The matter was also debated in Parliament on 22 November 2011 where it was referred to the Parliamentary Local Authorities Committee for consideration and reporting back to Parliament on the way forward. See Irene Wairimu, "Maasai in Bid to stop Revenue Deal at the Mara," *The Nairobi Star*, 17 June 2011; Kipchumba Kemei, "Locals Protest at Council Deal with Equity," *The Standard*, 21 November 2011, <http://www.standardmedia.co.ke/business/insidePage.php?id=2000047067&c&id=14&story=Locals%20protest%20at%20council%20deal%20with%20Equity>; Nzau Musau, "Equity Bank denies Foul Play in Narok Council Smart Card Deal" *The Nairobi Star*, 7 December 2011, <http://www.the-star.co.ke/national/national/52782-equity-bank-denies-foul-play-in-narok-council-smart-card-deal>; and the Hansard of the National Assembly of the Republic of Kenya of 22 November 2011 available at www.parliament.go.ke

authorities. Most of the court cases have been initiated in relation to the management of devolved funds, especially CDF, in which citizens have successfully obtained court orders stopping certain Members of Parliament from managing the funds on grounds such as irregular procurement until the cases are determined, or obtained court orders compelling the Members of Parliament to complete certain community projects.²⁵

Community Empowerment Programs

Community based empowerment programs have also been adopted by some public agencies and civil society organizations, notably the EACC and Transparency International (Kenya) respectively, to build the capacity of citizens to hold duty bearers accountable, especially in the procurement process. The Community Based Anti-Corruption Monitors and Facilitators program of the EACC aims to empower citizens to proactively participate in governance processes at the local level. The Commission offers trainings for civil society, to develop their capacity to detect, prevent and monitor corruption in their localities. As a result of this program, participants have raised awareness in their localities, reported alleged cases of mismanagement of public funds to the KACC, undertaken social accountability mechanisms such as social audits, public education and expenditure tracking in the public service and partnered with other stakeholders in improving governance.

25 The public is increasingly resorting to judicial intervention in cases of alleged mismanagement of the Constituency Development Fund due to the weak enforcement system to an extent that over twenty cases have been instituted since the establishment of the Fund. See for instance, *John Onyango Oyoo and 5 Others v Zadock Syongo and 2 Others* (2005) eKLR where the issue before the court was the alleged mismanagement of the Fund. Most of the Court cases have led to a number of remedies including freezing of Constituency CDF Accounts until the full determination of the cases. See Everlyn Kwamboka, "Shitanda's CDF Account Frozen over Shs. 26 Million," *The Standard*, 6 September 2007; Richard Munguti, "Ongoro Stopped from Running CDF Accounts," *Daily Nation*, 3 October 2011; James Kariuki, "Finish Project or go to Jail, MP Told," *Daily Nation*, 15 September 2010; Isaac Ongiri, "MPs Worried as KACC Probes all CDF Accounts," *The Star*, 9 August 2011; and Eric Oloo, "Who Lost CDF Money? Not Me," *Daily Nation*, 12 April 2010.

Conclusion

Public participation in procurement is a fundamental aspect of good governance and has the potential to improve economic growth and development in any country. It not only ensures that citizens influence the decisions and actions that are made, but also legitimizes the processes and leads to citizen ownership of the means and the end products. In spite of significant gains in improving governance in the management of public procurement in Kenya, public participation and engagement is still insufficient. This arises primarily from legislation that does not envisage active and direct public participation. Nevertheless, the new Constitution adopted in 2010 has positive provisions which, if implemented fully, will ensure participation in the management of public affairs. Proper and effective implementation of the law will consolidate and strengthen the gains made by citizens through the social accountability mechanisms in creating a transparent and accountable public procurement system.

Public participation in procurement is a fundamental aspect of good governance and has the potential to improve economic growth and development in any country

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CAMEROON





CAMEROON

Amplifying Citizens' Voices: The Role of Civil Society in Promoting Accountability and Transparency in Cameroon's Public Contract Regime

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ABSTRACT

Corruption in Cameroon is considered endemic and widespread, and in public procurement in particular. The government is estimated to have lost about FCFA 70 billion (US\$143 million) to private pockets through the non-execution of public contracts. Though Cameroon adopted a Public Contract Code in 2004 to regulate the award, execution and monitoring of public contracts and established a Public Contracts Regulatory Agency (ARMP) earlier in 2001, corruption continues to undermine the sector. Cameroon civil society, though not engaged as a stakeholder in the public procurement process, is increasingly taking interest through the approach of budget and expenditure tracking. This approach is helping CSOs to map out corruption deficits in the execution stages of public contracts and to advocate for increased transparency and accountability from tendering agencies as well as contractors.

* The views in this article are that of the author and do not necessarily represent views of Transparency International, Cameroon.

Introduction

It has been estimated that between US\$30 to US\$43 billion could be available in the procurement marketplace in Sub-Saharan Africa.¹ In 2004, public procurement was estimated to account for about 25 percent of Cameroon's state expenditure, an estimated four percent of the country's GDP. In fiscal year 2009 the State's development expenditure budget on major infrastructure, the principal source for public procurement, amounted to 418 billion FCFA (US \$880 million) or 18 percent of all State spending. Additionally, one third of the State's recurrent expenditure budget (projected at 1,359 billion FCFA or US \$2.86 billion for fiscal year 2009) goes into purchasing goods and services required by myriad government ministries, departments and agencies.²

In Cameroon, like elsewhere in the world, this sector is considered a high risk area for corruption and non-compliance with the rules to prevent it. It is estimated that corruption in public procurement is costing Africa annually about US \$148 billion.³ Many African countries in the last two decades have undertaken reforms in their public procurement systems to meet with international standards. In pursuit of reforms in the political and economic spheres, and in compliance with the World Bank and

1 Edgar Agaba and Nigel Shipman, "Public Procurement Reform in Developing Countries: The Ugandan Experience", in Gustavo Piga & Khi V. Thai (Eds.) *Advancing Public Procurement: Experiences, Innovation and Knowledge Sharing*, Boca Raton, FL, USA: PrAcademics Press, 2006, <http://www.ippa.ws/publications.html>

2 Cameroon Update N° 006, "Special Issue: Public Integrity and Anti-corruption", 29 September 2009, <http://xa.yimg.com/kq/groups/14482668/1884631674/name/Cameroon+anti+corruption+law.pdf>

3 Awadi Sadiki Mawenya, "Preventing Corruption in African Public Procurement", SAIIA Occasional Paper N° 9, August 2008, www.saiia.org.za

IMF sponsored Structural Adjustment Programs, Cameroon in 2001 created the Public Contracts Regulatory and in 2004 adopted the Public Contracts Code.

The existence of a public contract regulatory and institutional framework has not spared this sector from corruption. An official at the Ministry of Economic Planning and Regional Development, during an anti-corruption forum organized by the National Anti-Corruption Commission (CONAC) in April 2011 estimated that FCFA 70 billion (US \$143 million) of the public investment budget is lost to private pockets through the non-execution of contracts.⁴ The official further stated that in 2010, the Ministry received 920 petitions relating to wrongdoings in the execution of public contracts.⁵ Such revelations affirm the extent to which the absence of integrity and a lack of transparency, accountability and fairness undermine the public procurement process in Cameroon. This article looks at the implication of citizens and civil society organizations in Cameroon in exposing some of the irregularities that undermine the public contract system. Their actions in monitoring public contracts are based on the budget and expenditure tracking approaches. The article also maps out some integrity deficits that favor corruption in the public procurement process.

Facilitating Corruption in the Procurement Process

The effectiveness and efficiency of public procurement and contract award procedures are important for the development and growth of any country. In Cameroon, the capacity and ability of the public contract system to be used in delivering quality goods and services has been easily undermined due to corruption. Almost all graft cases investigated under *Opération Epervier* have unearthed breaches

4 Government reveals, "Contractors Swindle FCFA 70 billion Annually", *The Postwebedition*, 8 May 2011, <http://unikportail.com/component/content/article/268-actualite-standard-du-cameroon/1706-contractors-swindle-fcfa-70b-annually-govt-reveals.html>

5 Ibid at 4.

of procurement procedures.⁶ A study by Transparency International - Cameroon (TIC) and the Centre for Research in Economic Studies and Survey (CRETES) in 2007 revealed that despite the existence of a public contracts law, corruption in this sector is widely spread.⁷ The following were identified as the major reasons why integrity is undermined in the public contract sector: complexity in the procedures (36.6 percent); bribery (52.2 percent); and non-transparent and inequitable procedures (56.8 percent). These statistics are evidence of the extent to which the law itself leaves room for corruption.

The procedure for the award of public contracts in Cameroon is done either through an open invitation to tender or by mutual agreement. While these may be considered standard procedures, their conduct in Cameroon has been subject to serious criticism from both the general public and the Public Contracts Regulatory Agency (ARMP).⁸ To avoid awarding contracts in respect of these procedures, contracting and delegated contracting authorities have tend to fragment contracts. This practice is illegal and not permissible by the Public Contracts Code (PCC). Article 4(2) of the PCC states that contracts with a value below FCFA 5million (US\$10,000) are not subject to the rules of the PCC. Contracting and delegated contracting authorities have now tended to use this provision to award contracts through fragmentation and therefore not coming within the guise of the PCC.

To illustrate contract fragmentation, take for example a contracting or a delegated contracting authority who decides to take a contract of FCFA 12 million (US\$24,000) and fragment it into three sub contracts of FCFA 4 million (US\$8,000), each for the provision

of the same service or goods. By fragmenting the contracts, the official is no longer subject to abide by the standard procurement rules as outlined in the PCC. The fragmentation of contracts facilitates the possibility of awarding contracts on the basis of family ties (nepotism) or associates (cronyism). Such practices violate the main tenets of any veritable public procurement process such as value for money, fair competition and transparency. Article 32(3) of the Cameroon PCC favors the lowest bid tendering (LBT) method in the evaluation of bids submitted. This entails that the bid with the lowest price be awarded contracts. However, not all contracts are in reality awarded according to the LBT and value for money criteria.

The effectiveness and efficiency of public procurement and contract award procedures are important for the development and growth of any country

The Cameroon PCC does not apply to contracts considered as "special contracts." According to Article 30 of the Code, these are contracts that do not entirely fulfill the conditions relating to contracts by invitation or awarded by mutual agreement. Such contracts include those relating to national defense, security and contracts of strategic interests of the State. The failure to include such contracts within the purview of the PCC may indeed create opportunities for corruption. In Cameroon, official military expenditure as a share of GDP has been under two percent since the early 1980s.⁹ This demonstrates the extent to which military expenditure is favored over expenditures in other sectors like health or education. There is a wealth of studies on the extent to which the

6 This is an operation by the government of Cameroon to fight corruption in the public sector. Since its launch in 2004, there has been a series of arrests and prosecutions of government ministers and directors of state and para-public enterprises for embezzlement and the misappropriation of public funds.

7 Transparency International Cameroon, "Enquête Nationale 2006 auprès des Entreprises sur la Corruption au Cameroun". CRETES (Centre de Recherche et d'Etudes en Economie et Sondage), Yaoundé, February 2007, http://portals.wi.wur.nl/files/docs/gouvernance/Comeroun_Rapport_finalcretes_EntreprisesFINAL1.pdf

8 ARMP, "Etude sur les Sanctions dans le Domaine des Marches Publics", Yaoundé, March 2006, <http://www.armp.cm/rapport.pdf>

9 Wuyi Omitoogun, "Military Expenditure Date in Africa: A Survey of Cameroon, Ethiopia, Ghana, Kenya, Nigeria and Uganda" SIPRI Research Report No.17, Oxford 2003, <http://books.sipri.org/files/RR/SIPRIR17.pdf>

defense sector is highly prone to corruption and therefore investments in this sector need to follow well drafted procedures as do the other sectors. A Transparency International UK study states that a lack of competition in public procurement rules for the defense sector, under the pretext of security provisions, can lead to greatly heightened risks for corruption.¹⁰ It is therefore incumbent that procurement for defense purposes be subject to strict controls that will ensure integrity.

The Journal of Projects has become a veritable tool for CSOs interested in monitoring government spending as it provides details of each project

The overbearing authority of the Central Administration in Cameroon, through the contracting or delegated contracting authorities, may undermine integrity and accountability in the award and execution of public contracts. The contracting or delegated contracting authority has discretionary powers in the appointment of members of the tender boards. Considering the financial benefits that come with such appointments, there is a tendency for those appointed to pay allegiance to the appointing authority. They could also be easily manipulated to award contracts with less consideration for meritocracy and value for money. Article 148 of the PCC provides for the appointment of an independent observer to oversee the contract award process and confirm compliance with the law. Unfortunately the law is silent in cases in which the observations of the independent observer are not respected by the contracting authority. Such

¹⁰ Transparency International – UK, “Building Integrity and Reducing Corruption Risk in Defense Establishments: Ten Practical Reforms”, *TI*, London, April 2009, <http://www.ti-defence.org/component/content/article/42-publications/712-building-integrity-and-reducing-corruption-risks-in-defence-establishments-ten-practical-reforms>

legal gaps may lead to influence peddling, conflicts of interest and insider information.

Budget and Expenditure Tracking Approach

A great proportion of public contracts awarded in Cameroon for the supply of goods, services or infrastructural development is financed from the Public Investment Budget (PIB). The PIB is one of the two components of the annual State budget adopted every year by the National Assembly and enacted into law by the President of the Republic as the country's finance law. The PIB is the part of the budget that is reserved for long-term development and investment projects that could exceed the actual budgetary period. In Cameroon, the proportion of the PIB is often less than the recurrent expenditure budget. For instance, in 2010 the percentage of the PIB in an estimated budget of FCFA 2,571 billion (US\$5.2 million) was 26.46 percent against 59.12 percent for recurrent expenditure and 14.42 percent towards debt settlement.¹¹ This paper is not aimed at analyzing the budget structure of Cameroon but rather the effective use of what is planned for investment purposes.

Upon the adoption of the annual budget by the National Assembly, a list of projects to be financed is published in a document referred to as the Journal of Projects. The Journal of Projects has become a veritable tool for CSOs interested in monitoring government spending as it provides details of each project. This document is the only instrument that establishes a direct link between the PIB, the public contract regime and civil society as the attribution of contracts must respect the provisions of the PCC. In 2007, a coalition of CSOs known as Dynamique Citoyenne decided to use the publicly available Journal of Projects to monitor the rate of execution of the PIB in the education sector under the 2004 PIB. This study was carried out in three of Cameroon's ten regions, namely the Center, Far-North and Northwest regions.

¹¹ Dynamique Citoyenne, “Suivi Physico-Financier Des Dépenses Publiques du Secteur Education Exercice 2004”, *Rapport National De l'Enquete*, Yaounde, July 2007.

The Coalition used the budget tracking approach constituting a field verification of the different planned projects and progress made in realizing these projects. Certain indicators, such as the PIB execution rate for the provision of classroom benches and the rate of non-respect for public contracts rules, were used to determine how well budgets allocated for projects are managed. The results from the study revealed that in the Far North, Center and Northwest regions, the execution rate for the provision of classroom benches was a dismal six, nine and twenty-two percent, respectively. It was also observed that the award of some of the contracts for the execution of these projects was not in conformity with the procedures as provided for in the PCC. For instance, 96 percent of projects to be realized in the education sector in the Center Region did not respect the contract award procedures.

In the Far North and Northwest Regions, the non-respect of award procedures stood at 92 percent. The importance of this study is that for the first time it brought out the flaws in the management of the PIB and also highlighted the problems in the award and execution of public contracts in Cameroon. To further illustrate the role of CSOs in promoting integrity in public contracts through monitoring public spending on investment projects, reference shall be made on another study. This study was carried by CANADEL in four council areas looking at PIB financing in the education, health, energy, water, road and agriculture sectors.¹² The study considered 197 projects earmarked for execution between 2000 and 2005.¹³ Unlike the previous study carried by *Dynamique Citoyenne*, the CANADEL study, though monitoring the execution of the PIB, indirectly considered the efficiency and effectiveness of the public contracts regime. The study also evaluated the implication of the local population in the design and execution of the earmarked projects.

12 CANADEL (Centre d'Accompagnement de Nouvelles Alternatives de Développement Local) is a Cameroonian based non-governmental organization working to promote good governance at local levels.

13 CANADEL report, "Gouvernance et Budget d'Investissement Public à l'heure de la Décentralisation – Document de synthèse".

The above figures from the study by *Dynamique Citoyenne* are similar to that of CANADEL published in 2007.¹⁴ The CANADEL study revealed that only 78.79 percent of all the earmarked projects were realized, and that 13.13 percent were finished but incomplete, 2.02 percent were still in progress or to be soon executed at the time of the study and 6.06 percent represented projects not realized or for which there was no information.¹⁵ The study also further looked at the quality of the projects that were executed and found that only 23.66 percent of the 93 projects considered were of good quality, 47.31 percent were of average quality and 29.03 percent were of very poor quality.¹⁶ These statistics reflect the weakness of the public procurement regime in Cameroon.

Mapping Integrity in Public Procurement and Public Expenditure

The findings from these two studies depict the extent to which opacity has engulfed the public procurement regime in Cameroon. The Cameroon public procurement regime has been captured by a network of elites in connivance with the administrative authorities. This network has led to the development of a sophisticated system of clientelism and patronage that favors rent-seeking, collusion in bidding for contracts, and opportunities for kick-backs. In Cameroon, this capture is manifested when one or more of the bidding firms for a contract give bribes to members of the tender board to enable them to secure government contracts. One major consequence of such practices is inefficiency in the execution of contracts or supplies.

In addition, information about public contracts to be awarded was for a long time a tightly kept secret by senior officials in the different spending agencies. It is not surprising that in Cameroon there are members of parliament, senior government officials and even members

14 *ibid* at 13.

15 *ibid* at 13.

16 *ibid* at 13.

of the tender board who have bid and been awarded public contracts. This constitutes a politically corrupt practice, especially as it involves officials who misuse public power in the pursuit of illegitimate private advantage. Apart from rent seeking and collusion by both public officials as well as businesses, the public procurement regime in Cameroon is not independent. The tender boards that are set up in within the different tendering agencies are composed of administrative personnel from that particular agency and appointed by the administrative hierarchy of the tendering authority.

According to Article 112 of the PCC, tender boards are to examine and give technical opinions on tender files, and ensure integrity in the bidding process. The tender boards are dependent (financially and administrative) on the contracting or delegated contracting authority. This means that any contrary view to that of the appointing authority may cause the tendering authority to withhold funds, rendering impossible their effective functioning.

Lastly, the public procurement process is challenged by the effectiveness of its mechanisms for ex-post verification of performance. There is a provision for Contract Oversight Commissions, which must be consulted for contracts that exceed specified amounts, depending on whether the contract is for services/studies, supplies, buildings, or roads/infrastructure. These Commissions also have the powers to modify, reject or approve proposals from the tender boards.

The public procurement process in Cameroon is also challenged by the effectiveness of the mechanisms for ex-post after-the-contract verification of performance. In the case of contracts exceeding certain amounts, the Commission review intervenes before the award of the contract by the contracting authority, following the proposal of the tender board. The commission's monitoring and verification serve as a preventive function, considering that it occurs prior to awarding the contract. Unfortunately though, there is no monitoring after the performance of the contract by the successful bidder. Ensuring delivery and value for money, according to specifications, is left to the tendering authority.

While they may be personally liable for collusive or negligent practices (such as accepting shoddy work, or neglecting to properly inspect goods delivered) under the PCC's punitive provisions (Articles 105 to 107), the procurement system itself requires a value-for-money assessment. The law however provides that an independent auditor, recruited by the ARMP, shall conduct an annual audit of 25 percent – selected at random - of all contracts awarded worth between FCFA 30 million and 500 million (US \$63,000 USD to \$1 million), and of all contracts awarded worth over FCFA 500 million.

The ineffectiveness of the tender boards noted in some administrative units, especially at the local levels, poses a serious problem of integrity. It is therefore not unusual to refer to the public contract award process as folkloric, as the real power of who controls the process is rarely in the hands of the tender board, but instead resides more with the contracting or delegated contracting authority.

Recommendations and Conclusion

Cameroon's reform of its public procurement system, which started with the establishment of the Public Contracts Regulatory Authority in 2001 and the adoption of the PCC based on internationally accepted standards, could probably save the country from the devastating effects of corruption. However, the non-consideration of civil society and the refusal to allow for citizen participation in the procurement process is a major weakness. It is therefore imperative for Cameroon to continue to pursue this reform making it transparent and conducive for open competition, as a failure to do so will be at its own political, economic and institutional peril. The contracting or delegated contracting authorities wield enormous power over the procurement process, making implementation difficult.

In some cases, as revealed by the examples of the two CSO studies, there is a lack of genuine competition and the rules are usually tilted in favor of a predetermined winner. The examples we saw in the two studies considered in this article also show that projects are

sometimes neither harmonized nor based on priority criteria. Another major characteristic of public contracts in Cameroon are the unexplained long delays between the awarding of a contract and the actual release of funds. Such delays have often been attributed to administrative bottlenecks and corruption and their consequences are far reaching, leading to underfunding, incomplete projects and abandonment of projects by contractors.

Considering these gaps, it is recommendable for the public procurement system to be effectively built on the values of integrity, transparency, accountability and participation. To achieve this, CSOs need to start exploring some of the gaps of the current system to ascertain their role as critical stakeholders. This could be done by carrying out in-depth research in some of the grey areas of the public procurement law, as well as research on the conduct of procurement processes and the monitoring of the execution of public contracts. Such studies and monitoring would provide these organizations with the technical competence to undertake training and advocacy to instigate reforms in public procurement.

It is important for the government to encourage civil society participation in the procurement process by allowing them to monitor all stages of the process. CSOs and the public can act as watch dogs to monitor the implementation of projects financed by the state budget. For instance, CSOs could be invited to assist during meetings of the different tender boards and contract reception commissions as observers. Such actions can support advocacy campaigns to overcome the observed weaknesses, thus enhancing public accountability in the management of public procurement.

According to a study by the United Nations Development Programme (UNDP) Procurement Capacity Development Centre (PCDC), introducing civil society has the potential to strengthen transparency and accountability in public procurement.¹⁷ It however notes that

this is not without challenges, considering the complexity of the public procurement process and the possibility of misunderstandings on the part of observers.

The findings from these two studies depict the extent to which opacity has engulfed the public procurement regime in Cameroon

To ensure integrity, transparency and accountability in the public procurement process, there is an urgent need for the Government of Cameroon to adopt a mechanism that would allow citizens access to information on all stages of the process and would contribute towards enhancing accountability. The PCDC study concludes that transparency in public procurement constitutes an arena for governments and citizens to engage and allows for rights holders and duty bearers to both deliver on their obligations.¹⁸ Accountability in public procurement is strengthened when this positive relationship exists between a government and its citizens. There is a need for the government to recognize the emergence of CSOs as partners with an added value in amplifying citizens' concerns in enhancing government policies that have an impact on their daily lives.

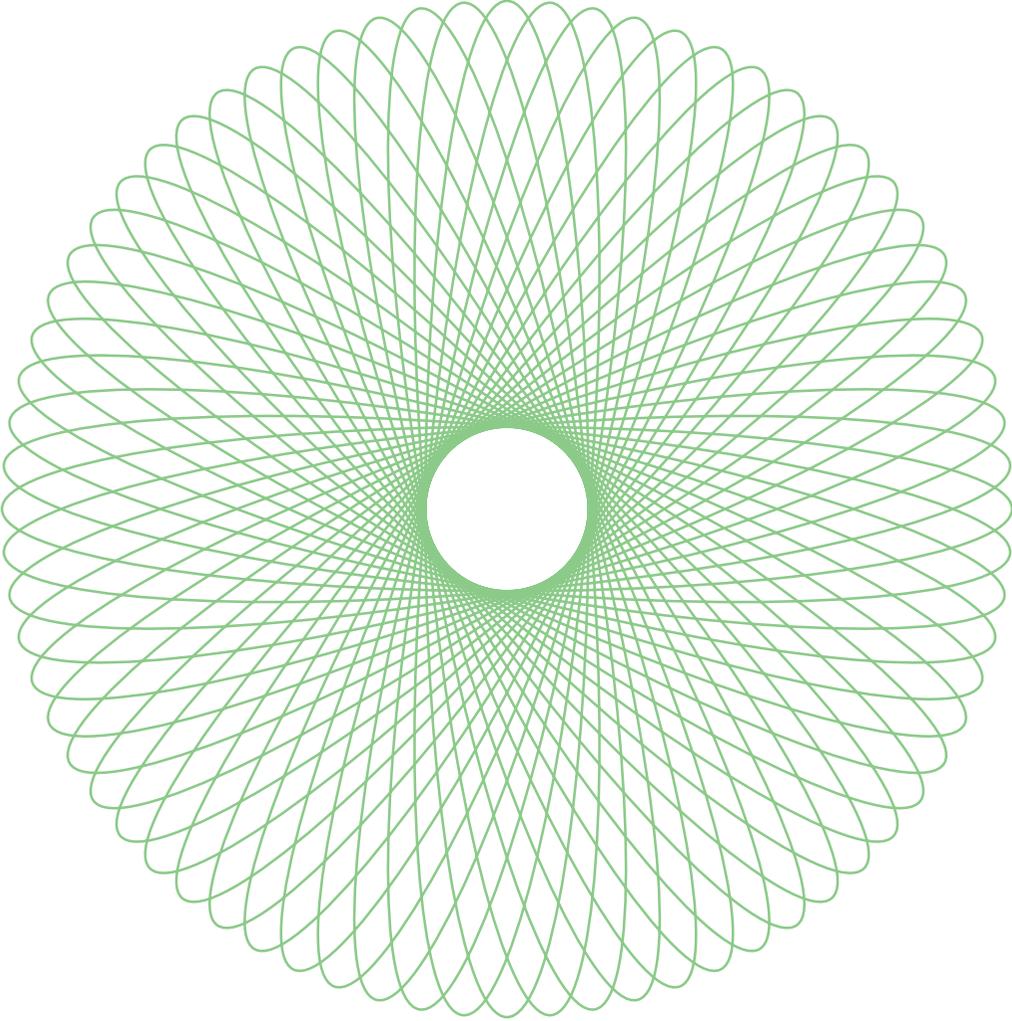
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¹⁷ Rasmus Jeppesen, "Accountability in Public Procurement - transparency and the role of civil society", September 2010, <http://unpcdc.org/media/142496/story%20of%20an%20institution%20-%20accountability.pdf>

¹⁸ *ibid* at 17.

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BRAZIL



BRAZIL

The Risk of Corruption in Public Procurement in Brazil

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ABSTRACT

Contracts made by states for public projects are well-known for their association with corruption, often linked to the formation of cartels and the corruption of public employees by private businesses. This article introduces a new index for assessing the risk of corruption in public procurement, by considering data for each Brazilian state on their relative use of the different modalities of contracts with private businesses, as prescribed by the Brazilian Law Number 8,666 of 1993 (“Law 8,666”). Modalities of public contracts can be ranked based on their ability to both reduce the discretion of public agents and to promote competition among potential contractors. In general, as the discretion of public agents increases, the risk of corruption increases. Likewise, as competition increases, the risk of corruption is reduced. According to Brazilian law, the six modalities for purchasing include *bidding exemption*, *unenforceability*, *invitation*, *in-person and electronic trading*, *price quotation* and *public competition*. The legislation imposes different formats for contracts depending on the amount of funds involved and the type of purchase (public construction, services and acquisition of goods). For our analysis, all modalities were reduced to a single variable: namely, the increase and decrease in competitiveness among potential contractors. Data on each state’s purchases, categorized by modality, was analyzed and an index of the risk of corruption was calculated. The results of the study demonstrated that data on public purchases was not easily accessible. The analysis also revealed that the modalities of *unenforceability* and *bidding exemption* were excessively utilized, suggesting a possible abuse of the purchasing modalities with higher risks of corruption.

Part 1: Context and Method

The funds in a state's budget represent one of the main targets of corruption in all countries. Within public budgets, payments for construction and services represent a major category of expenses. As will be demonstrated in this article, it is difficult to make generalizations about the volume of contracts issued by the public administration because of inherent differences among sectors and the management models they adopt. When the state purchases school supplies or medicine, hires cleaning services, or orders the construction of a public building by a private company, an interface is created between public and private agents. This interface often constitutes a risk of corruption. Among specialists in the field of good governance, the integrity of the bidding process is a central concern. There is much debate around issues such as the legislation that regulates state purchases, the transparency of the process for its participants and external observers, and the measures to avoid conflicts of interest among those involved.¹ Despite all this debate, there are no organizations in Brazil that systematically work towards the reduction of corruption in public purchases. In addition, data on public purchases at the state level in Brazil is not easily accessible. In this context, an index to evaluate the risk of corruption in public accounts was developed, based on the modalities of purchases prescribed by Law 8,666, as well as on public purchases made by the Brazilian states in

¹ Strombom, Donald, "A corrupção nas compras de produtos e serviços," *Perspectivas econômicas, Revista Eletrônica da USIA*, vol. 3, nº 5, November 1998.

the year 2009. The bidding process is a concern for specialists in the public sector. The passing of Law 8,666 was a legal landmark in Brazil and a decisive step towards the control of corruption as it established more far more comprehensive rules for bidding procedures, to be applied at the federal, state and municipal levels. On the other hand, for proponents of the "management model"², anti-corruption laws and mechanisms are questioned on the grounds that they can potentially delay purchases and contracts. Some may argue that the values of integrity are in opposition to the demand of efficiency and flexibility, and that in the case of Brazil, Law 8,666 needs to be modified to give more flexibility to the public administration in procurement decisions.³ The most evident examples of this difference of opinions between the model provided for under Law 8,666 (more phases and longer deadlines) and the management model (short deadlines and suppression of phases despite reduced competition) are the changes in legislation over the bidding process in 2011 to guarantee the realization of public contracts for the World Cup in 2014, providing an unfortunate indicator of the management model's prevailing.⁴

The nature of the transactions between state and private entities in public contracting provides various risks of corruption. Among these risks is the formation of cartels between private suppliers of goods and servic-

² The management model for public administration was later adopted in 1995. It is characterized by transformation from the traditional bureaucratic model and eliminates excessive procedural steps by focusing on flexibility and immediate outcomes.

³ Abramo, Cláudio Weber; Capobianco, Eduardo Ribeiro, "Licitações y contratos públicos: el caso Del Brasil," *Nueva Sociedad*, nº 174, pp. 69-90, 2004. Castro, Luciano de, "Combate à corrupção em licitações públicas," *Universidad Carlos III de Madrid, Departamento de Economía, Documento de Trabajo*, April 2007.

⁴ Law 12,463 was created in 2011 to regulate bidding processes for necessary construction projects for the Olympic and Paralympic Games in 2016, FIFA's Confederations Cup in 2013, and FIFA's World Cup in 2014. The law specifies measures to fast-track the contracting process. For example, according to law 12,463, the basic project to be executed for a specific construction should be done by the contracted company, after the bidding process. Law 8,666, regulating any other bidding process, requires that the public organ contracting the service previously plan any such project.

es, intended to manipulate the supply market.⁵ Another risk is the corruption of public officials by suppliers who intend to manipulate tender conditions to allow for an increase in the price (or decrease in the required quality) of the products or services they are hired to provide. In this case, a portion of the additional profits illegally obtained by overbilling is transferred as a bribe to the corrupt public official or officials facilitating the altering of the tender. The initiating and the organizing of the “schemes of corruption” in the bidding process can originate either from public or private sector actors.

The public administration in Brazil developed several mechanisms for purchasing goods, services and construction to avoid such risks of corruption. Corruption in the bidding process can lead to several economic costs, including overbilling for contracts, low quality of contracted services, and even investment in areas that are not high-priority for the public interest.⁶ The analysis presented in this paper focuses on the criteria of “economicity,” which is defined as the purchasing of goods, services and construction by the State with the optimal cost-benefit relationship. The central mechanism adopted by the public sector to achieve such balance is to defer to market mechanisms when conducting governmental purchases. Wide disclosure of public tenders, along with clear descriptions of the objects sought and the selection criteria should enable the State to receive the best offers for the services, products and construction it intends to procure.

Law 8,666 introduced several purchase modalities according to the nature and monetary value of the purchased good or service. They can be ranked according to the discretion allowed for public servants and to the competition facilitated among suppliers.

Figure 1 illustrates the relationship between the discretion of public agents and competition in bidding processes. As the decision power of public officials in the selecting of suppliers for a particular service contracted by the state increases, competition in the process is reduced. On the other hand, when there is more disclosure of purchases and clearer rules, more offers are presented by private agents, and competition in the process increases. Figure 1 also identifies the risk of corruption involved in contracting services and construction. As the agent’s discretion increases, the risk of corruption also increases. Conversely, when there is greater competition, the risk of corruption is reduced.⁷

FIGURE 1. Model for corruption risk evaluation in public purchases

Risk of corruption	- ←	→ +
Discretion for public servant	Less discretion	Greater discretion
Market condition	Greater competition	Less competition
Administrative resources needed for controlling corruption	High cost	Low cost

Nevertheless, efforts to guarantee greater competition involve costs for the public administration. Organizing bidding processes that guarantee more competition consumes time and financial resources from both the state, which needs to organize the purchasing process, and from suppliers, and assure its competence and efficiency to execute a project with the best cost-benefit conditions.⁸

The purchase modalities indicated in Law 8,666 include *bidding exemption, unenforceability, invitation, price quotation, public competition* and, more recently, through Law 10.520 of

⁵ Since such manipulation typically does not involve the bribery of public agents, it may not be considered corruption in a strict sense.

⁶ In addition to economic issues, other criteria are relevant in purchases made by the state, such as the equality, transparency and legality of the bidding process.

⁷ *Ibid* at 3.

⁸ This aspect of the balance between benefits expected from market mechanisms and costs to guarantee that the market will function and produce the expected results according to the logic of competition among potential suppliers will not be evaluated in the present research.

2002, *in-person and electronic trading*.⁹ The legislation imposes different requirements for the purchase of services, goods and construction depending on the type of the purchase and the funds involved. For higher values, the tender requirements prescribed by the law demand more competition and, for lower values, administrators have greater discretion (Law 8,666, Articles 23 and 24). There are also different requirements for cases in which the state purchases the same products repeatedly. Finally, there are specific bidding requirements for construction contracts that apply to the specific cycles of a project, which involve several steps of planning and execution.

There are no organizations in Brazil that systematically work towards the reduction of corruption in public purchases. In addition data at the state level is not easily accessible

For our analysis, these various requirements amongst the modalities will be reduced to a single variable: namely, the increase or decrease in the degree of competition established among potential suppliers. As Figure 1 illustrates, this dimension coincides with the differences among the bidding processes that offer more or less discretion for the public servants involved.

Previous studies attempted to classify purchase modalities based on the competition of the bidding process.¹⁰ The classification in this

⁹ *Bidding exemption* occurs when the purchase meets certain criteria prescribed by the law and the public servant chooses not to conduct a bidding process. *Unenforceability* occurs when it is not possible to carry out a bidding process for factual reasons. *In-person or electronic trading* is done for purchases of common goods and services that are readily found in the market. *Invitation, price quotation, and public competition* occur when the purchased good or service falls into certain value limits, as prescribed by the law.

¹⁰ For example, Fernandes (2003) applied a dichotomous classification, separating competitive modalities (*public competition, price quotation, and invitation*) from non-competitive modalities (*unenforceability and exemption*).

index aims to go further, distinguishing groups as follows.

Ample Competition, Low Arbitration: Low Risk of Corruption

Some purchasing modalities involve ample competition, low discretion, and consequently a low risk of corruption. *Trading* is a purchasing modality of the public administration in which the supplier who gives the lowest bid among all the suppliers involved is contracted by the state. In this modality, there is a low chance of manipulation by private and public agents due to the presence of all suppliers and to a transparent decision-making process. *Price quotation* and *public competition* fall in the same modality class of low risk of corruption because suppliers are required to demonstrate their technical and financial competence prior to the bidding process. A call for bids must be published in major newspapers, and the supplier presenting the lowest cost must be selected, thereby limiting the discretion granted to public agents.

Reduced Competition, Moderate Discretion: Moderate Risk

Some purchasing modalities involve a moderate risk of corruption, as they allow for reduced competition and a moderate level of discretion by the public agent. In the *invitation* modality, fewer offers are received from suppliers. The administration must invite at least three companies to present an offer, and then chooses the lowest offer. The administrator is authorized to decide which companies to invite. This modality, therefore, can be considered of moderate risk given the possibility of limiting the number of suppliers and the greater arbitration of public administrators.

Low Competition, Ample Discretion: High Risk

Finally, there are purchasing modalities that involve low competition and ample discretion for the public agent, thereby entailing a higher

risk of corruption. The bidding modalities of *exemption* and *unenforceability* are two options of purchasing in which the public administrator has ample discretionary powers to decide over the selection of suppliers. *Bidding exemption* is permitted by law for low-value purchases and for emergency situations that require urgent reaction from the public administration. *Unenforceability* is permissible specifically in situations when competition is not viable for certain of reasons.¹¹ In these modalities, competition among suppliers is minimal, the discretion power of the administrator is maximized, and the risk of corruption is elevated.

the volume of each state’s budget, the budgets of the state Secretariats of Education and Health, as well as the total bid volume in each secretariat. These values serve as a reference for determining the absolute and relative financial volume of each bidding process.

The data set is from 2009, and the values refer to committed expenses.¹² Expenses were broken down according to the modalities employed for each contract, based on the absolute financial volume and relative financial volume spent within each bidding modality. The percentage of resources spent in purchase modalities involving low competition served as a refer-

ence to calculate the risk of corruption. Tables 1 and 2 show a summary of the purchases made according to bidding modality, and are ordered according to the established degree of competition.

Even with data limited to only one fiscal year (2009) and from only two secretariats, it was not possible to obtain information on bidding

FIGURE 1. Model for the evaluation of corruption risks in public purchases for the various contract modalities

Risk of corruption	-	+	
	Low	Moderate	High
Modality	trading		
	public competition	invitation contest	unenforceability exemption
	price quotation		

Part 2: Data

Data on the modalities of government purchases in Brazil is not easily accessible. It is not possible to collect data on the total purchases for all Brazilian states, as neither the state governments nor the state Courts of Audit routinely produce information on the modalities of state purchases.

The data collected refers to records from the Secretariats of Education and Health in all 26 states and the Federal District, assessing the degree of competition in government purchases. The information was collected from each state’s Court of Audit and, in some cases, from the state’s Secretariat of Finance. Table 1 presents the summary of the data, indicating

modalities for six states (Amapá, Mato Grosso do Sul, Paraíba, Rio Grande do Norte, Roraima, and Sergipe). In one state (Maranhão) only data from one of the two secretariats was accessible. Given efforts for more transparency in public accounts, a prerequisite both for auditing and for social control, the inaccessibility of data from these states is a troubling sign.

Analysis of the data available reveals a large variability in the application of the different purchase modalities. Some states are notable for a negative trend, with more than 50 percent of the volume of purchases being done by *exemption*, *unenforceability* or *invitation*—modalities associated with high and moderate risks of corruption. Among these states were Espírito Santo, Minas Gerais and São Paulo. The Secretariats of Health in the states of Bahia and Rio Grande

¹¹ Examples of *bidding exemption* include contracts made based on well-known expertise (i.e. consulting contracts) and purchases of products or services from other public organs (i.e. publication in the official press).

¹² In the budgeting cycle, resources are first planned (predicted by the budget laws), then committed (freed for application), and finally paid (effectively withdrawn from public funds).

TABLE 1. Information on bidding volume by modality in state secretariats of education (2009)

STATE	YEAR	EXPENSES COMMITTED BY THE STATE	SECRETARIAT	EXPENSES COMMITTED TO EDUCATION	TOTAL BIDDED	RISK INDICATOR	EXEMPTION	UNENFORCE-ABILITY	INVITATION	TRADING	PRICE COTATION	PUBLIC COMPETITION	SUM
Acre	2009	3,519,085,437.46	Education	15%	10%	●	10%	2%	0%	55%	24%	9%	100%
Alagoas	2009	3,963,284,144.92	Education	10%	1%	●	4%	0%	10%	29%	57%	0%	100%
Amapá			Education			●							
Amazonas	2009	6,833,418,722.79	Education	13%	16%	●	23%	13%	0%	22%	12%	29%	100%
Bahia	2009	19,119,546,628.83	Education	15%	19%	●	92%	0%	0%	7%	1%	0%	100%
Ceara	2009	13,158,992,107.25	Education	15%	9%	●	9%	3%	0%	40%	0%	48%	100%
Distrito Federal	2009	19,978,231,554.05	Education	16%	11%	●	34%	15%	0%	38%	1%	12%	100%
Espirito Santo	2009	10,179,625,205.00	Education	11%	89%	●	68%	1%	0%	13%	15%	4%	100%
Goias	2009	11,805,556,739.46	Education	11%	7%	●	3%	3%	0%	71%	15%	8%	100%
Maranhão	2009		Education		1%	●	5%	0%	94%	0%	0%	0%	100%
Mato Grosso	2009	7,998,263,625.63	Education	13%	7%	●	31%	1%	2%	18%	18%	31%	100%
Mato Grosso do Sul			Education			●							
Minas Gerais	2009	35,922,835,159.83	Education	13%	4%	●	35%	26%	0%	23%	1%	16%	100%
Para	2009	10,210,618,410.09	Education	12%	12%	●	27%	2%	4%	38%	10%	19%	100%
Paraíba			Education			●							
Parana	2009	19,696,703,857.67	Education	17%	1%	●	47%	1%	0%	52%	0%	0%	100%
Pernambuco	2009	16,355,370,875.83	Education	12%	27%	●	15%	13%	0%	41%	3%	27%	100%
Piauí	2009	4,776,654,678.88	Education	0%	57%	●	22%	0%	4%	68%	4%	2%	100%
Rio de Janeiro	2009	41,883,546,015.19	Education	7%	25%	●	3%	10%	1%	56%	4%	26%	100%
Rio Grande do Norte			Education			●							
Rio Grande do Sul	2009	14,402,988,443.70	Education	3%	22%	●	29%	3%	21%	23%	23%	2%	100%
Roraima	2009	4,441,174,343.29	Education	15%	14%	●	2%	26%	1%	41%	26%	4%	100%
Rondônia			Education			●							
Santa Catarina	2009	11,836,627,610.28	Education	11%	13%	●	26%	2%	0%	55%	1%	15%	100%
São Paulo	2009	118,410,443,426.66	Education	14%	34%	●	30%	61%	0%	8%	0%	0%	100%
Sergipe			Education			●							
Tocantins	2009	4,065,095,680.77	Education	16%	17%	●	5%	8%	1%	75%	6%	6%	100%
TOTAL	2009	378,558,062,667.58	Education	13%	21%	●	33%	37%	1%	19%	3%	7%	100%

LEVEL OF RISK
 ● Low risk ● Medium risk ● High risk ● N/A

TABLE 2. Information on bidding volume by modality in state secretariats of health (2009)

STATE	YEAR	EXPENSES COMMITTED BY THE STATE	SECRETARIAT	EXPENSES COMMITTED TO EDUCATION	TOTAL BIDDED	RISK INDICATOR	EXEMPTION	UNENFORCEABILITY	INVITATION	TRADING	PRICE COTATION	PUBLIC COMPETITION	SUM
Acre	2009	3,519,085,437.46	Health	7%	54%	●	0%	0%	0%	68%	3%	29%	100%
Alagoas	2009	3,963,284,144.92	Health	4%	55%	●	6%	7%	0%	74%	1%	12%	100%
Amapá			Health			●							
Amazonas	2009	6,833,418,722.79	Health	14%	58%	●	25%	14%	0%	41%	1%	18%	100%
Bahia	2009	19,119,546,628.83	Health	18%	20%	●	6%	1%	1%	89%	0%	4%	100%
Ceara	2009	13,158,992,107.25	Health	10%	46%	●	18%	7%	0%	60%	2%	13%	100%
Distrito Federal	2009	19,978,231,554.05	Health	18%	26%	●	13%	19%	0%	39%	0%	29%	100%
Espirito Santo	2009	10,179,625,205.00	Health	12%	66%	●	62%	2%	0%	33%	1%	3%	100%
Goiás	2009	11,805,556,739.46	Health	7%	29%	●	15%	19%	0%	60%	1%	5%	100%
Maranhão	2009		Health			●							
Mato Grosso	2009	7,998,263,625.63	Health	10%	2%	●	61%	6%	1%	32%	0%	0%	100%
Mato Grosso do Sul			Health			●							
Minas Gerais	2009	35,922,835,159.83	Health	11%	37%	●	7%	54%	0%	37%	0%	1%	100%
Para	2009	10,210,618,410.09	Health	6%	51%	●	74%	1%	0%	25%	0%	0%	100%
Paraíba			Health			●							
Parana	2009	19,696,703,857.67	Health	11%	1%	●	1%	1%	1%	92%	4%	1%	100%
Pernambuco	2009	16,355,370,875.83	Health	5%	9%	●	11%	53%	1%	31%	2%	1%	100%
Piauí	2009	4,776,654,678.88	Health	12%	49%	●	18%	4%	3%	65%	6%	4%	100%
Rio de Janeiro	2009	41,883,546,015.19	Health	9%	42%	●	9%	10%	0%	77%	0%	3%	100%
Rio Grande do Norte			Health			●							
Rio Grande do Sul	2009	14,402,988,443.70	Health	9%	18%	●	9%	19%	0%	67%	1%	3%	100%
Roraima	2009	4,441,174,343.29	Health	9%	3%	●	0%	0%	0%	92%	6%	2%	100%
Rondônia			Health			●							
Santa Catarina	2009	11,836,627,610.28	Health	13%	28%	●	10%	7%	0%	72%	1%	9%	100%
São Paulo	2009	118,410,443,426.66	Health	10%	66%	●	22%	41%	0%	34%	0%	2%	100%
Sergipe			Health			●							
Tocantins	2009	4,065,095,680.77	Health	15%	92%	●	9%	62%	0%	19%	1%	9%	100%
TOTAL	2009	4,065,095,680.77	Health	11%	42%	●	20%	30%	0%	44%	0%	5%	100%

LEVEL OF RISK
 ● Low risk ● Medium risk ● High risk ● N/A

do Sul, and the Secretariats of Education in Mato Grosso, Pará, Pernambuco and Tocantins conducted more than 50 percent of their purchases by modalities that involve the least competition and are reserved for “exceptional” situations. In

the case of Maranhão, the little data available indicated only the use of *invitation*.

The total volume of purchases in all states by the two secretariats in each state (last line in Tables 1 and 2) is equally concerning, given the modalities most commonly used. Of the R\$47 billion (US\$26 billion) committed to education and the R\$88 billion (US\$48 billion) committed to health, R\$10 billion (US\$5.5 billion) and R\$27 billion (US\$15 billion), respectively, were applied for purchases of goods, services and construction. This is concerning as in education and health, 70 and 50 percent of the volume, respectively, involved costs that used mechanisms of low competition, thereby not guaranteeing optimal cost-benefit relationships for the administration and the citizens being served.

TABLE 3. Risk of corruption index

STATE CODE	Index for risk of corruption in public purchases by the Secretariats of Education and Health in the states		
AC	0.04	●	low
AL	0.12	●	low
AP		●	high
AM	0.39	●	moderate
BA	0.45	●	moderate
CE	0.22	●	low
DF	0.37	●	moderate
ES	0.67	●	high
GO	0.26	●	moderate
MA	1.00	●	high
MT	0.38	●	moderate
MS		●	high
MG	0.62	●	high
PA	0.61	●	high
PB		●	high
PR	0.26	●	moderate
PE	0.33	●	moderate
PI	0.25	●	moderate
RJ	0.18	●	low
RN		●	high
RS	0.35	●	moderate
RO	0.25	●	moderate
RR		●	high
SC	0.21	●	low
SP	0.75	●	high
SE		●	high
TO	0.62	●	high
TO	0.58	●	high

LEVEL OF RISK

- Low risk
- Medium risk
- High risk
- N/A

Part 3: Index

To calculate the index of the risks of corruption, the percentage of bidding volume in the modalities of high discretion was used as an indicator of risk. This index has the advantage of being clearly defined and thus allows easy classification of the different bidding processes, as long as the data is available. However, it is important to remember that using mechanisms with low competition does not constitute evidence of corruption. Instead, it simply increases the probability of corruption.

Table 3 calculates the risk index based on the purchases made via the bidding modalities involving less competition (*exemption, invitation and unenforceability*). The risk index was calculated for each state using the mean of the volume of purchases made by these modalities and adding the absolute values for the two secretariats. The index assigns a value of 0 when no purchases are made by *exemption* or *unenforceability* and a value of 1 when all purchases are made by these modalities. Indexes between 0 and 0.25 were classified as low risk, from 0.25 to 0.50 as moderate risk, and above 0.50 as high risk. The states for which it was not possible to assess bidding modalities were also included in the latter group.

Conclusion

This work was conducted with the objective of developing an index to evaluate the risk of corruption in public purchases based on modalities of purchasing prescribed by the landmark Brazilian regulatory legislation, Law 8,666. The modalities were ranked based on the efforts made to reduce the discretion of public officials and to increase competition among suppliers.

Data was not easily accessible. Direct access to information on public contracts was not made possible by either the executive power or the state Courts of Audit.

The results of the index, presented in Table 3, demonstrate the excessive use of the *exemption* and *unenforceability* modalities, abusing the exceptions prescribed by the law to allow greater discretion by public officials. The present legislation, therefore, falls short in reducing corruption in Brazil.

It is hoped that the results of this work will contribute to the emergence of non-governmental organizations focusing on the monitoring of bidding processes, as currently there are no organizations in Brazil. It is likely that the absence of systematic monitoring of public purchases is due to the lack of transparency of aggregated data. As demonstrated by this study, the lack of transparency can be a result of either inadequate access to information or a lack of uniformity of the data available.

Moreover, it is hoped that this work will also encourage state Courts of Audit to make information on public bidding available and accessible to civil society, as well as to use this information internally in its auditing processes.

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The results demonstrate the excessive use of the exemption and unenforceability modalities, abusing the exceptions prescribed by the law to allow greater discretion by public officials

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SLOVAKIA





SLOVAKIA

Open Public Procurement Portal: Reflections from Slovakia

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ABSTRACT

This article provides reflections and lessons learned by Transparency Slovakia while creating the unique Open Public Procurement Portal which concentrates procurement data and provides business-intelligence tools for analysis. The article sets off by describing the need for reliable, good quality data on public procurement that turned into Transparency Slovakia's Procurement Portal project. The article discusses main features of the application, the pre-requirements for creating such an application and lessons learned for other small organizations dealing with similar projects.

Corruption, Procurement and the Legal Framework in Slovakia

Roughly 20 percent of yearly Slovak public expenditures is spent through public procurement, according to estimates from Transparency International Slovakia (Transparency Slovakia). At the same time, some 80 percent of the population believed in 2009 that procurement processes are always or often corrupt.¹ A 2011 survey of Slovak construction companies suggests that half of them had encountered corruption in the past year.² However, only one person has been convicted of fraud in public procurement since 2006. Bottom-line: corruption in Slovakia is widespread and costly, and public authorities are ineffective in combating it.³

However, there is little research being conducted on public procurement and corruption, mostly due to insufficient or poor-quality data. The government's Office for Public Procurement, for example, produces several high-level reports with no real policy implications. While the Office maintains a

1 Transparency International Slovakia, "Corruption Perception in Slovakia," *Public Opinion Poll*, 1 November, 2011, http://transparency.sk/wp-content/uploads/2010/03/FOCUS_Spravapre-TIS_november-2009.pdf

2 *Hospodárske noviny*, "Korupciu zažila polovica stavbárov," *HN*, 1 November 2011, hn.hnonline.sk/c1-23353125-korupciu-zazila-polovica-stavbarov

3 Slovakia's Corruption Perception Index for past five years is 4,8 out of 10, which is still within on third of the least corrupt countries in the world. However, according to the 2010 CPI scores (4,2), Slovakia is the fifth most corrupt country within the EU (Greece - 3,5; Bulgaria - 3,6; Romania - 3,7; Italy - 3,9. Transparency International, "Corruption Perception Index 2010," *IT*, 1 November 2011, http://transparency.org/policy_research/surveys_indices/cpi/2010/results

database with the results of all procurement transactions, it has failed to create any data-exchange interface or to provide rudimentary functionality such as on-demand, aggregate results. Procurement information such as information on tenders or results was and still is published only as structured text documents. Far from an insignificant technicality, the lack of a publicly accessible database made adequate monitoring of public procurement nearly impossible, effectively excluding any non-specialist involvement.

The Slovak Act on Public Procurement ("the Act") is the prominent law on procurement in the country, which was passed in 2006 and updated in 2011. It is based on the 2004 European Commission Directives that set the general ground rules for procurement within the European Union.⁴ The Act provides for a fairly transparent procurement process. Tenders notices for large contracts must be published online; bidders can be present when their bids are being opened (though not when evaluated); unsuccessful bidders receive information on the winning bid; and parties can appeal both the process and the result at various points.

The Act does not explicitly address civil society participation in the procurement processes. In general, it provides space to any "party affected" to lodge complaints. While some tendering documents (tenders, notices) are shared with the public at large, the culture of disclosure was enforced mostly via the Freedom of Information Act.⁵

In the past, it was virtually impossible for researchers and the public in general to identify the major contracting authorities and vendors in Slovakia and how much money was in the system. As such, Transparency Slovakia decided in 2010 to build an internet-based portal on

4 See EC 2011: Current rules, thresholds and guidelines (General & utilities).

5 Slovak Freedom of Information Acts provides very liberal framework for access to information. Almost any information held by the public bodies has to be provided upon request (with few exceptions such as protection of personal information or proprietary information). The actual practice is often lacking with authorities dismissing the request. Missing a specific regulatory body to deal with Freedom of Information (FOI) matters and rather slow and untrustworthy judiciary, the enforceability of the FOI can be slow and troublesome.

public procurement called Open Public Procurement (available at <http://tender.sme.sk/en/>) with the aim of creating a single-stop shop for procurement data, its visualization and some business-intelligence-like features. Above all, Transparency Slovakia felt that civil society, government and businesses needed to work with decent, good quality data in order to effectively analyze the problems in Slovak public procurement. While the portal does not necessarily see the general population as its main beneficiary, the accessibility of good quality reporting data does indeed provide an important platform for citizen-driven monitoring activities.

Initial Results and Features

It paid off handsomely. Among other things, the data received allowed Transparency Slovakia to find out that in 2010, 43 percent of state procurement deals received only a single bid with the average number of bids received being 2.3⁶ In an interesting example, Transparency Slovakia found that whilst Slovak car owners can choose from at least ten car insurance providers, in 2009-2010 official institutions most often settled with only one offer.⁷ This is especially important as a lack of competition leads to higher prices and correspondingly inefficient public expenditures. Transparency Slovakia's research on construction contracts shows that the presence of an additional bidder can decrease the final price by five to eight percent.⁸

The Open Public Procurement portal is an unparalleled experiment bringing data in an easily accessible form to researchers, policy experts and the general public as a whole.

6 Transparency International Slovakia, "O 43% veľkých verejných obstarávaní v roku 2010 súťažil len jeden kandidát," *Tl-S*, 1 November, 2011, <http://www.transparency.sk/o-43-velkych-verejnych-obstaravani-v-roku-2010-sutazil-len-jeden-kandidat/>

7 Transparency International Slovakia, "Poistovne o veľké PZP zákazky od ministerstiev nesúťažia," *Tl-S*, 1 November, 2011, <http://www.transparency.sk/poistovne-o-velke-pzp-zakazky-od-ministerstiev-nesutazia/>

8 Jan Pavel, "Ako ovplyvňuje počet uchádzačov o verejnú zákazku cenu verejnej zákazky?" *Tl-S*, 1 November, 2011, <http://transparency.sk/wp-content/uploads/2010/01/Ako-ovplyvnuje-pocet-uchadzacov-o-verejnu-zakazku-cenu-verejnej-zakazky.pdf>

While still not yet perfect, Transparency Slovakia expects the portal to become a worthwhile research tool both in Slovakia and in the European Union, given the similarity of regulatory regimes in the EU.⁹

Procurement information such as information on tenders or results was and still is published only as structured text documents

The Open Public Procurement portal was launched in November 2011, in association with the major Slovak daily newspaper SME, whose online edition of the paper is one of the most visited websites in Slovakia. The partnership is advantageous for both parties as it brings valuable content to the site at minimal cost and provides Transparency Slovakia access to the broad SME readership. The Open Public Procurement portal has various unique features. The portal brings together a massive amount of public procurement data¹⁰ dating back to 2005 on roughly 35,000 contracts worth almost €23 billion (US \$31 billion);¹¹ structures data along the main dimensions of purchaser,

9 Effectively, the portal could serve as more detailed, research-oriented TED (Tenders Electronic Daily). Concentrating more granular data, research similar to *Public procurement in Europe: Cost and effectiveness* (PwC, London Economics and Ecorys, 2011) could be carried out.

10 Application had been programmed to automatically download ('scrape') and processes the data from the official Procurement Bulletin published by The Office For Public Procurement. While costly and prone to website layout changes, data scraping was only option for the project as the Office was not willing to provide interfaces to its databases.

11 (Slovak) Public Procurement Act distinguishes different financial thresholds (defined by the European Commission) depending on subject of procurement. Among other things, these thresholds influenced whether the procurer had to submit final result to Official Notice Board. In general, the database contains all contracts "below the limit". For more details, please consult Act on Public Procurement (2006), The Office For Public Procurement (Slovakia), "Act on Public Procurement, 2006. (Revised version, Unofficial Translation)," 1 November 2011, http://www.uvo.gov.sk/download/2010/english/act_fullversion_2010.pdf

vendor, sector (area of procurement¹²), region, procurement procedure, procurement criteria and date;¹³ provides a breakdown and visual overview of any combination of the above mentioned dimensions; displays procurement details for each individual procurement deal as submitted by the purchaser (such as a detailed contract purpose, the number of bidders and contact information); and exports processable data for anyone interested.

Interestingly, the portal allows the user to discover, for example, who was the top contractor for the Ministry of Justice in 2010, which was Microsoft Slovakia in IT services, worth roughly €480,000 (US \$650,000). One could then continue looking at Microsoft Slovakia to

The portal can also serve as an example for policymakers, demonstrating how IT projects can be drivers and enablers of transparency

find out that it had only two contracts that year and that both were conducted under generally uncompetitive “negotiated processes”, and would eventually find out in the full “official procurement result notice” (the original data) that there could not have been sufficient competition as Microsoft was the only company to provide services to copyrights.

Procurement Portal: Impact

While it is too soon to assess any systemic results of the portal on the procurement system, the impact of the portal is already obvious in

¹² As defined by the Common Procurement Vocabulary used EU-wide. For more information on CPV please consult http://simap.europa.eu/codes-and-nomenclatures/codes-cpv/codes-cpv_en.htm

¹³ With regard to criteria, the Act distinguishes several main procedures differing mainly in their openness and two contract-awarding criteria (economically most advantageous offer, lowest price). For more details, please consult Act on Public Procurement (2006).

several areas. The procurement data it provides are an invaluable asset for watchdog organizations and interested citizens. Using such data, one can calculate the competitiveness of the contracting authorities, vendors and sectors. The available data allows Transparency Slovakia to look into vendors that “compete alone,” “special-friends” (vendors that do business with very few procurers) or those who can supply almost anything and have an overly broad portfolio as measured by the standardized contract-matter categories (CPV).

While none of the above-mentioned trends is a smoking gun for corruption, they can serve as good indicators of inefficiencies that may indeed be linked with corruption. Such findings are especially important as they allow procurement practitioners to pinpoint problematic areas and take appropriate action. As the portal is just taking off, there will be further tweaking and the addition of new functionalities. The portal can also serve as an example for policymakers, demonstrating how IT projects can be drivers and enablers of transparency. The key challenge for the portal and Transparency Slovakia is how to make the most of the project beyond its research aspect. The systemic impact of the portal will depend on whether the portal proves useful and worthwhile for procurement regulators, businesses and watchdogs.

Your Own Procurement Portal: Requirements and Pitfalls

Creating the Open Public Procurement portal took Transparency Slovakia over year and half and cost donors - namely the Open Society Institute, the US Embassy in Slovakia and Siemens - roughly €30,000 (US \$40,500) both in programming and internal personnel costs.

Good news for anyone interested in replicating the portal – the bulk of the work does not need to be repeated – the project will publish the project source code on GitHub with full technical documentation available. Anyone wishing to build their own portal will only need: a solid understanding of procurement processes; good quality procurement data; in-house IT

skills, or funds to contract IT programmers; and sufficient funds (see above).

The availability of good quality data is critical for success in developing a procurement portal. A data feasibility study is strongly encouraged. It is also important to find out whether there is a centralized place for the publication of procurement documents, especially results, and in what format the data is available. Importantly, poor, text-based data will make it not only more expensive to create a procurement database, but will also reduce the reliability of data.¹⁴ When possible, it is advisable to persuade officials and authorities controlling the data to release and/or provide continuous access to the data, by showing what they can get from the project. Not only will those developing the system get a very important stakeholder on board and secure institutional buy-in, but they will also save much of the energy and resources required to scrape the data.

Creating and maintaining a public procurement portal is a complex operation requiring significant IT skills, both in software engineering and IT project management. Whether IT services will be provided in-house or contracted outside, it is recommended that the individual or group developing their own portal:

- have a very clear idea of the final product, especially who will be using it; what are the critical features for the target groups project; what are the measures of success;
- make clear their expectations in the project specification and in the vendor contract (if provided externally);
- have contractual agreements that guarantee full legal control of the final product (with regard to possible issues with copyrights, authorship disputes);

¹⁴ For example Úrad pre verejné obstarávanie, “Notification on tender result - 04152 – VBS,” 20 December 2011, <http://www.e-vestnik.sk/EVestnik/Detail/15292>. Further, despite Transparency Slovakia’s best efforts, they have not yet matched cancelled contracts with the results in the database. In other words it is a database of results, not actual spending itself. Also, the poor original data quality prevents Transparency Slovakia from identifying some companies. Transparency Slovakia suggests that information on the quality of the data be shared with users in disclaimers and stressed when presented to media or policy makers.

- have clear rules on what counts as a new feature and what counts a bug;
- mitigate risks of technological and vendor lock-in;
- always have full technical documentation to the project
- always have a specific deadline for the overall project and for individual sub-activities.

As in any other projects, things will not always go according to plan. However, from the experience of a rather small think-tank without major IT expertise, Transparency Slovakia found that IT projects are in general very complex; deadlines will most likely not be met; projects will run over the projected budgets; and both “IT people” and “policy people” will get frustrated.

While not necessarily good news, these problems can be mitigated by planning for early failures; generous allocation of resources (especially time); excellent project management; and accepting that IT portals are always “a work in progress”.

Tentative Thoughts and Lessons Learned (and to be Learned)

While working on the Open Public Procurement portal, Transparency Slovakia has learned that sometimes the proof of the pudding is indeed in its eating. Estimating the difficulty and price-tag for some IT sub-activities and features is hard to do beforehand, and there is not much one will be able to do about it. Further, the product will never be completely finished. In the experience of Transparency Slovakia, it helps to think of the project as a perpetually improved “public beta version.” There will be always things that can work better, and more functions to add, but that should not be reason for not publicly releasing the portal once it works reasonably well.

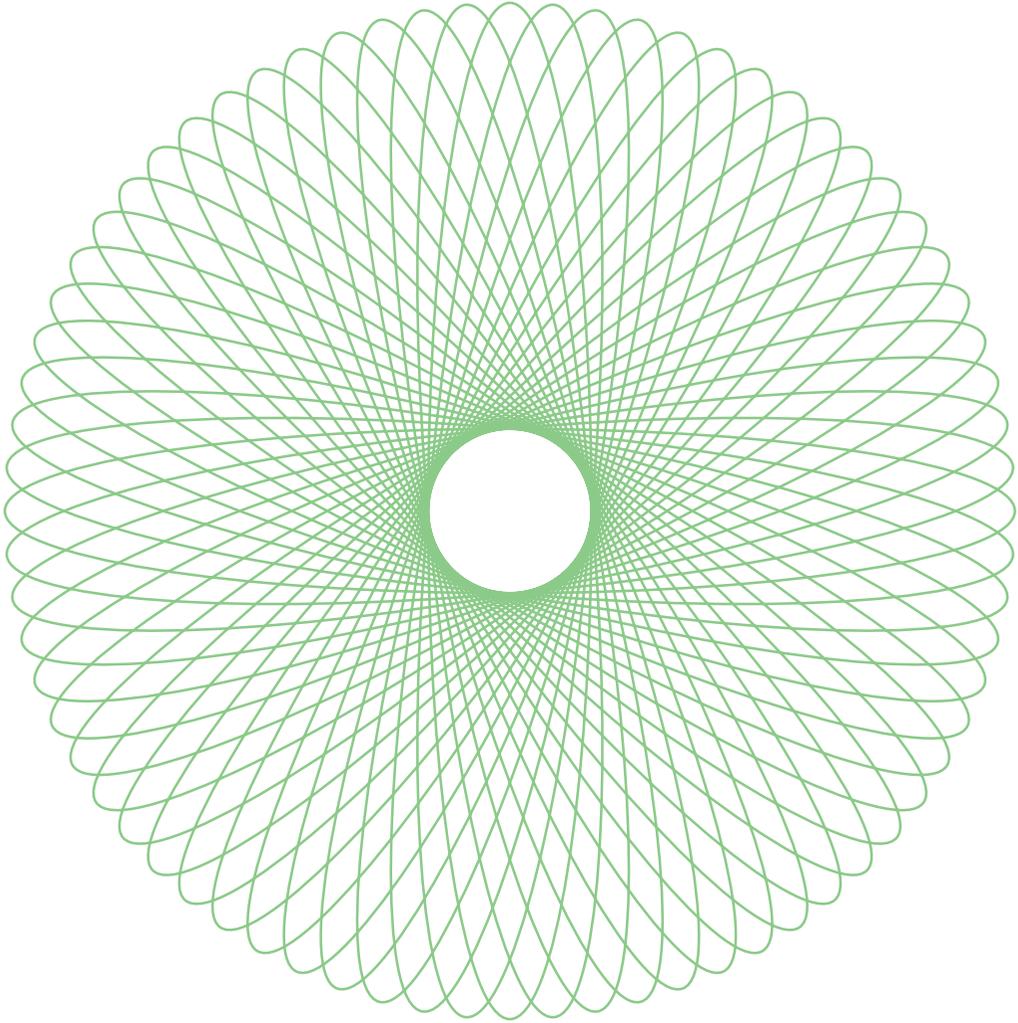
There are two main lessons one can draw from the Open Public Procurement project. Firstly, the project shows the importance of evidence-based policy projects. Getting

actionable data is one of the best ways to influence public policy. Secondly, the portal is an excellent example of how useful open government data can be. However, the lesson here is that a great many current open data projects lack clear goals and expertise. The most successful projects for procurement portals find the right balance between IT-activism, quality research and actual influence on policy making

The key challenge now for TI Slovakia is how to make the most of the project beyond its research aspect, determining how to build a community around the tool, and how it can help businesses, policy makers and other watchdogs who use it.

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TIMOR-LESTE





TIMOR-LESTE

What Do We Have to Lose? Timorese Citizens' Diminishing Confidence in Public Procurement

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ABSTRACT

In Timor-Leste, about 70 percent of the state budget is allocated to construction projects as part of its state-building program. However, while increased investment is welcomed in Timorese communities, statistics show that public confidence in government expenditure is diminishing. Drawing on fieldwork that was conducted in September and October, 2011, involving over 800 people, this article examines some of the main reasons for a lack of confidence in government expenditure among citizens. These include: insufficient quality control of public procurement processes throughout all stages of a project's life-cycle; a lack of coordination with local leaders and communities, who are the intended beneficiaries of state investment; and the politicization of state expenditure. These factors are combining to exacerbate the significant gap that already exists between ordinary citizens and the decision-making elites in the capital city of Dili, making it extremely difficult for people to hold their elected officials to account. Drawing on these findings, we suggest that diminishing levels of public confidence might be addressed by the government of the Democratic Republic of Timor-Leste through engaging more effectively with local leaders and communities, and by following best practice principles as set out on their website. In addition, the capacity of Timorese civil society to monitor government expenditure needs attention, in particular, their capacity to coordinate from the local to the national level in order to monitor expenditure at all stages of a project's life-cycle.

Introduction

Corruption-related issues, popularly referred to as 'KKN' in Tetun (*Korupsaun, Kolusaun and Nepotismu*, or in English "Corruption, Collusion and Nepotism") are of central importance in Timor-Leste. Public confidence in state expenditure and decision-making is extremely low, as reflected in Transparency International's Corruption Perception Index which in 2011 ranked Timor-Leste as 143 out of 183 countries.¹

An important reason for low levels of public confidence is that there is a significant "gap" between ordinary citizens, particularly for those in the rural areas, and the decision-making elites in the capital city of Dili.² State expenditure has increased dramatically, mainly through the use of revenues from Timor-Leste's off-shore oil and gas reserves, and focuses predominantly on construction projects. However, as the United Nations Special Rapporteur on extreme poverty and human rights recently noted in a fact-finding mission to Timor-Leste, this has not translated into improved standards of living for the majority of the population living in the rural areas.³ Both increased state expenditure and minimal benefits for Timorese communities have been strongly criticized by

1 Transparency International, "Corruption Perceptions Index 2011," *TI*, <http://www.transparency.org/cpi2011>

2 see for example Grenfell, Damian, 2008, "Governance, Violence and Crises in Timor-Leste: *Estadu Seidauk Mai*". In Mearns, D. & Farram, S. (Eds.) *Democratic Governance in Timor-Leste: Reconciling the Local and the National*. Darwin, CDU Press.; Cummins, Deborah 2010 *The Politics of Mutual Recognition: Local Governance in Timor-Leste*, PhD thesis, University of NSW.

3 OHCHR, "Timor-Leste: Have all Timorese benefitted from a decade of development and international assistance?" *OHCHR*, November 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11618&LangID=E>

Dili-based NGO La'o Hamutuk as key indicators of the 'resource curse' that is afflicting the Timorese economy.⁴ Even more concerning is that some state expenditure envisaged for the future may be financed through foreign loans.⁵ If this increased expenditure does not yield sustainable results, and if human capacity and development are also not invested in, it will only add to the financial burden to be carried by future generations.

In response to the rising perceptions of corruption, the Republica Democratica Timor Lorosa'e (RDTL) government has taken various measures. Last year, the Anti-Corruption Commission (Comissão Anti-Corrupção, or CAC) was established, with Timor-Leste's first Anti-Corruption Commissioner appointed in February 2010. To date, the CAC has investigated more than twenty cases, and held a series of workshops to raise awareness amongst the RDTL government's official and local authorities of their legal obligations and possible modes of recourse if corrupt practices are identified.

In addition, in August 2011 the Ministry of Finance launched its 'Procurement Portal' and 'Transparency Portal', both tools that provide up-to-date information on state expenditure, accessible through the Ministry of Finance website.⁶ However, while these web-based portals are important steps towards increasing transparency, the immediate benefit for most Timorese communities in which there are low levels of literacy and minimal access to the internet is questionable. The ability of most Timorese to access such information is further undermined in the context of under-resourced civil society at national, district and local levels.

The information presented here is based on some of the results from workshops conducted

4 "Orsamentu Jeral Estadu 2012 ha'belit liu tan Malisan Rekursu ba Timor-Leste" ["General State Budget 2012 adds to the Resource Curse in Timor-Leste"]; *Tempo Seminal* online, 31 October 2011.

5 La'o Hamutuk/Movimento Kontra Deve, 'Groups worldwide urge debt-free Timor-Leste not to borrow', *La'o Hamutuk*, press release issued 8 September 2011, <http://www.etan.org/news/2011/08debt.htm>

6 Ministry of Finance, Timor-Leste, "Transparency Portal". Available at: <http://www.transparency.gov.tl/english.html>

by the CAC from September to October 2011 involving over eight hundred people, in which Alexandre Gusmão was an active participant. These workshops were conducted in Dili and in the Covalima-Suai and Bobonaro-Maliana districts. The results of the workshop were supplemented with in-depth interviews conducted by Alexandre Gusmão to probe people's understanding and experience of the procurement process in Timor-Leste. Research participants include ordinary citizens, village chiefs, and various local government administrators and officials. Also included were chiefs of departments and others further up the ministerial line of command, such as national directors, director-generals and inspector-generals across various central government ministries.

The major themes that were identified in workshops and interviews revolved around various weaknesses in the regulatory environment and politicization of state expenditure. These issues are not reflective of a failure of the government or of any particular political party. Rather, they are linked to the many challenges of state-building in Timor-Leste, as a newly-independent, post-conflict society. We hope that these findings will open a door for more discussion of these issues, in order to assist in the state-building process for Timor-Leste.

The Regulatory Environment

There are ten separate pieces of legislation that govern public procurement in Timor-Leste, the earliest of which was passed into decree law in 2005 and has been subject to amendment more than five times.⁷ Some of the law is quite complicated, which has been further

7 These are: Decree Law 10/2005: Procurement Legal Regime; Decree Law 11/2005: Administrative Infractions of the Procurement Judicial Regime; Decree Law 12/2005: Public Contracts Legal Regime; Decree Law 14/2006: Amendment to the Procurement Legal Regime; Decree Law 24/2008: Changing the Procurement Legal Regime; Decree Law 01/2010: Changing the Procurement Law Regime; Decree Law 02/2010: Special procedures for awarding construction work up to USD 250,000 to local companies located in the sub-districts; Decree Law 03/2010: Procurement Monitoring Commission and the Procurement Technical Secretariat; Decree Law 14/2010: Temporary Procurement Measures; Decree Law 15/2011: Establishing the National Procurement Commission and Alteration to Decree Law 10/2005.

compounded by the influence of international advisers who themselves come from vastly different legal backgrounds, at times creating confusion and affecting the application and enforcement of the law. In addition, as various pieces of legislation have been amended and tender regulations changed, there has at times been insufficient training on legal obligations and quality control mechanisms for procurement officials.

Various weaknesses in the regulatory environment and politicization of state expenditure are linked to the many challenges of state-building in Timor-Leste

Despite the complicated legislation and the fact that tender mechanisms have been subject to frequent change, the primary criticisms raised in the workshops and interviews were not directed at the *substance* of the laws on public procurement.⁸ Instead, as one official explained, "the law is good, the principles are set in place and there is a technical guide that must be followed. But the capacity to implement these guidelines is not yet up to standard."⁹ As he went on to explain, however, the capacity to implement the law does not simply refer to the education and training of government officials. Rather, one of the major challenges comes back to the language policy of the RDTL Government.

Language policy is a highly contested issue in Timor-Leste, reflecting broader ideological debates over national identity. While the Constitution of Timor-Leste places Tetun and Portuguese as the 'official languages,' and Indo-

8 TLa'o Hamutuk, "Comments from La'o Hamutuk on the Draft Country Chapter for Timor-Leste: 2011 Survey for Monitoring Implementation of the Fragile States Principles," *La'o Hamutuk*, 2011, <http://www.laohamutuk.org/econ/fragile/LHSubFSP6May2011.pdf> p 10.

9 Interview with public procurement official, Dili, September 2011.

nesian and English as the 'working languages,' the reality is that most legislation is written in English and Portuguese and there is an expectation that important government business be conducted in these same languages. This issue is compounded by the fact that, because of the influence of international advisers, many guidelines as well as written in English or Portuguese, further alienating Timorese staff, who are not fluent in either. This has very clear practical implications for the functioning of government and the transparency of procurement processes. As one procurement official explained in an interview,

"...many times we are scared to make a mistake in our work... and sometimes we must do the work slowly... This is not because we don't understand how to do our job, but in order to work actively and according to the law in Timor-Leste, there is a problem... The law is written in a language that we don't understand. So this makes it difficult for us to do our work. Sometimes we want to do our work quickly, but we are not certain if we understand correctly or not. So we must wait for our Director to ask for confirmation. But our Director also has a lot of work to do..."¹⁰

While guidelines for inspection to ensure quality control have been established in each ministry, many challenges remain, including a limited understanding of the procurement process

Quality Control Issues

Another area of great concern for citizens was the lack of engagement with local community members and their elected leaders. Many people raised this point, arguing that this meant the project was often poorly implemented. For example, one village chief explained that a

road was recently built in his community, but it washed away in the rainy season as project managers did not draw on local knowledge of water flow in the area.¹¹ As a result of these and other problems, many people now feel disenchanted with implementation of these projects. As one community member commented, "...we ordinary people feel very sad. We hear there is a lot of money, but the execution of [the RDTL government] budget is going forward arbitrarily. It is not done according to any design..."¹²

Many of these concerns linked back to insufficient quality control mechanisms in central public procurement processes. In all of the workshops that were conducted in Dili, Maliana, and Suai, many participants identified quality control issues at all stages of a project's cycle, including the tendering process, where there are insufficient mechanisms to ensure planning quality, and also construction, where there is little or no technical oversight to ensure that implementation is up to standard. These are all having serious impacts on local communities who are the intended beneficiaries of these projects.

While guidelines for inspection to ensure quality control have been established in each ministry, many challenges remain, including a limited understanding of the procurement process, insufficient recourse or appeals processes, a lack of technical capacity to oversee projects and insufficient time for quality control. This is further complicated for local construction projects, which are each relatively small (but cumulatively amount to a significant investment), and as such the cost of proper technical oversight for each project can seem prohibitive. As one ministerial inspector commented, "...the system for control in Timor-Leste is extremely weak. For the implementation of almost all projects... the attention to quality control is either not there or is extremely low. The consequences of this pose big risks for the overall quality of some

¹¹ Public workshop in Maliana, September 2011.

¹² Public workshop in Suai, September 2011.

¹⁰ Interview with public procurement official, October 2011.

projects...¹³ Many local leaders and community members claimed that once a contract for a local construction project is signed, public works officials no longer appear to be interested in ensuring projects were carried out to a correct standard, and a number of construction projects have been poorly implemented and/or remain unfinished.¹⁴

The lack of quality control has also meant that contracts have been granted to a number of companies who have not provided the necessary information and paperwork during the tendering process. According to a Timorese engineer who has been involved in public works since Indonesian times, there are many public projects that lack an appropriate plan, design and bill of quantities (BoQ).¹⁵ For example, while some projects may have a design, companies have provided no clear relationship between the design and the BoQ. As he explained, "this is a big failure [on the part of government] that occurs when conducting a project: there is no plan. People just look to the project and money, but they do not have a good plan on how to allocate the money or how to execute the budget properly..."¹⁶ For other projects, there may be a plan, but it does not reflect the reality on the ground. In these cases, "people make a plan, but people do not visit the fieldsite. They do not go to study the viability, or to justify the fundamental reasons for the project and the benefits that it will bring."¹⁷ Finally, during implementation stage, he observed that "...once the contract has been signed, there is no technical oversight of the project... they just go and look once there is a request for payment..."¹⁸

These are all serious issues, particularly as the Timor-Leste state has begun to use its

oil and gas revenues to invest heavily in infrastructural development and proposes significant future expenditure on physical infrastructure.¹⁹ The increased expenditure means that existing procurement processes will be put under even greater stress, and limited resources may be lost.

Politicization of State Expenditure

Another important set of concerns frequently raised throughout workshops and interviews concerned the politicization of state expenditure, with two main paths identified. The first is the preferential granting of contracts to veterans of the fight for independence, or to those aligned with powerful members of a political party.²⁰ The second is the use of state funds to fulfill informal promises made during a campaign once elected to office (thus repaying political "debt" through the granting of projects).

Preferential awarding of contracts to ex-resistance fighters has been a key area of concern in Timor-Leste, and is part of a broader debate over how to recognize veterans for their sacrifices during the 24-year fight for independence from 1975 to 1999. Over the past year, there have been two sets of contracts that have been awarded with the clear aim of benefiting ex-resistance fighters. The first was a series of rice importation contracts from Vietnam, with 30 veteran-led companies named as beneficiaries to the scheme. This program was complicated during the implementation stage, in which contracts were awarded to a mixture of veteran-led and other companies. For these other companies, the Timorese newspaper *Tempo Seminal* claimed, contracts were awarded on the basis of family

13 Discussion with an Inspector, Dili, October 2011.

14 Workshop in Maliana held 20 September 2011. Workshop in Suai held 23 September 2011.

15 A Bill of Quantities (BoQ) is an itemized list of materials, parts, and labor, with their costs, required to construct, maintain or repair a specific structure.

16 Interview with engineer, Dili, October 2011.

17 Interview with engineer, Dili, October 2011.

18 Interview with engineer, Dili, October 2011.

19 RDTL, "Timor-Leste Strategic Development Plan 2011-2030, approved July 2011," *RDTL*, <http://timor-leste.gov.tl/wp-content/uploads/2011/07/Timor-Leste-Strategic-Plan-2011-20303.pdf>

20 International Crisis Group, "Timor-Leste's Veterans: An Unfinished Struggle?" *Update Briefing Asia Pacific No 129*, 18 November 2011, <http://www.crisisgroup.org/~media/Files/asia/south-east-asia/timor-leste/B129%20Timor-Lestes%20Veterans%20-%20an%20Unfinished%20Struggle.pdf>

and political affiliation.²¹ The profits for these contracts were relatively substantial. As recounted in a recent International Crisis Group report, the profits for these contracts were around "\$15,000 to \$20,000, split between four or five principals, with almost no work involved."²²

It is important to consider ways in which ordinary citizens can be more empowered, and local leaders actively consulted and engaged to the execution of projects in their community

The second set of contracts involved the construction of a nation-wide electricity distribution network, in which contracts were awarded to former resistance fighters (often aligned with Indonesian businesses), which has raised various concerns among Timorese people.²³ A particularly concerning feature of this program has been not only the capture of state contracts by ex-resistance fighters, but also mixed levels of quality control in the construction of the grid. During field research conducted by the authors to the districts of Viqueque and Baucau, many community members expressed concern at the haphazard installation of electricity poles, where they were sometimes installed without concrete foundations, or in dry river beds, rendering them unlikely to survive multiple rainy seasons.²⁴

Community concerns on the politicization of state expenditure were not confined to infrastructural projects, but also extended to other projects such as the distribution of agricultural equipment and solar panels.

21 Tempo Seminal, "Boek iha foos laran" ["Shrimps in the Rice"]; *Tempo Seminal* online, 17 February 2011, <http://tempo-semanaltimor.blogspot.mx/2011/02/boek-ih-foos-laran.html>

22 Ibid at 20.

23 Ibid at 20.

24 Research trip conducted early July, 2011.

Many community members complained that this equipment was distributed in their communities through local members of the same political party, and in a manner that was not transparent. There were many instances raised during workshops in Dili, Covalima-Suai and Bobonaro-Maliana to back up this point. Added to this, a number of businessmen explained how they needed to align themselves with important political figures in order to win contracts. As one businessman explained, "...for businessmen, it is difficult for us to win tenders for projects, if we don't go together with other people who have strong influence in the political party, or people who are related to those in the political party... It is true that if we do not have a relation with the political party, it is almost impossible to win a project."²⁵ As he went on to explain, this has a major impact on his ability to work transparently and professionally. While he may prefer to go through the formal tendering process, he is unlikely to win contracts this way: "...we want to work on projects professionally, but sometimes we do not receive projects. So we must work according to the situation, not according to our desires or our professionalism. We are required to involve these other people which in turn affects the quality of the project."²⁶

The Role of Civil Society

In the context of these multi-layered issues relating to public procurement, there is potentially a strong role for civil society to play. Historically, the Catholic Church has played an important role in advocating for social justice in Timor-Leste, and was central to the Timorese fight for independence against Indonesian occupation. Now, through its *Komisaun Justisia no Paz* (Commission for Justice and Peace), the Church has continued its work and is vocal in advocating for justice and good governance in independent Timor-Leste.

25 Interview with businessman, Dili, October 2011.

26 Interview with businessman, Dili, October 2011.

Secular civil society also has a strong role to play, particularly in lobbying and holding the RDTL government accountable for decision-making, as well as in keeping Timorese citizens informed of the government's responsibilities and developments in state expenditure. However, there are a number of constraints that NGOs face in engaging effectively on these issues. National NGOs La'o Hamutuk, LABEH and Luta Hamutuk are the three main NGOs involved in monitoring government expenditure and corruption.²⁷ However, for many other national NGOs there is a lack of human resources and many competing demands on their time. In addition, for nearly all NGOs, there is a lack of coordination between civil society at the local, district and national levels, which is a necessary step for monitoring government decision-making at all stages of the public procurement process. Recently, the *Rede ba Korupsaun* (Corruption Network) was formed, which is a positive sign that NGOs are looking to coordinate their activities and share knowledge. However, this network is still in its infancy and it is yet to be seen how effective it will be.

Conclusion

The question of corruption was a major concern for research participants, often referred to as a "disease" that has started to attack the society of Timor-Leste. Of the various issues that were raised by workshop and interview participants, quality control and the politicization of state expenditure were very common, which are key areas of work for the CAC. There are a number of allegations of corruption that are currently being investigated by the CAC, some which have been concluded and sent to the Prosecutor-General for prosecution in the courts. However, the implementation of the law is still quite weak, and many research participants had little faith that corruption cases would be decided in a timely manner.

The second set of issues revolved around quality control. While community members emphasized that they welcomed increased investment in their communities, it is important that these investments follow best practice principles, for example, those laid out in the *Government Procurement Best Practice Guides 1-7*, published on the RDTL government Ministry for Finance website.²⁸ As the Timor-Leste Government is increasingly investing in construction works across the country, current weaknesses in public procurement systems are becoming increasingly apparent, and causing very real resentment among the general population. This is further exacerbated by the gap that currently exists between ordinary citizens and decision-making elites in the RDTL government, which shuts most people out of the everyday governance and state-building process. With this in mind, it is also important to consider ways in which ordinary citizens can be more empowered, and elected local leaders actively consulted and engaged, with regard to the execution of specific projects in their particular community. Finally, it is important that the capacity of civil society be strengthened, and coordination between NGOs from the local to the national level nurtured, in order to effectively monitor government decision-making and the implementation of projects at all stages of the project's life cycle.

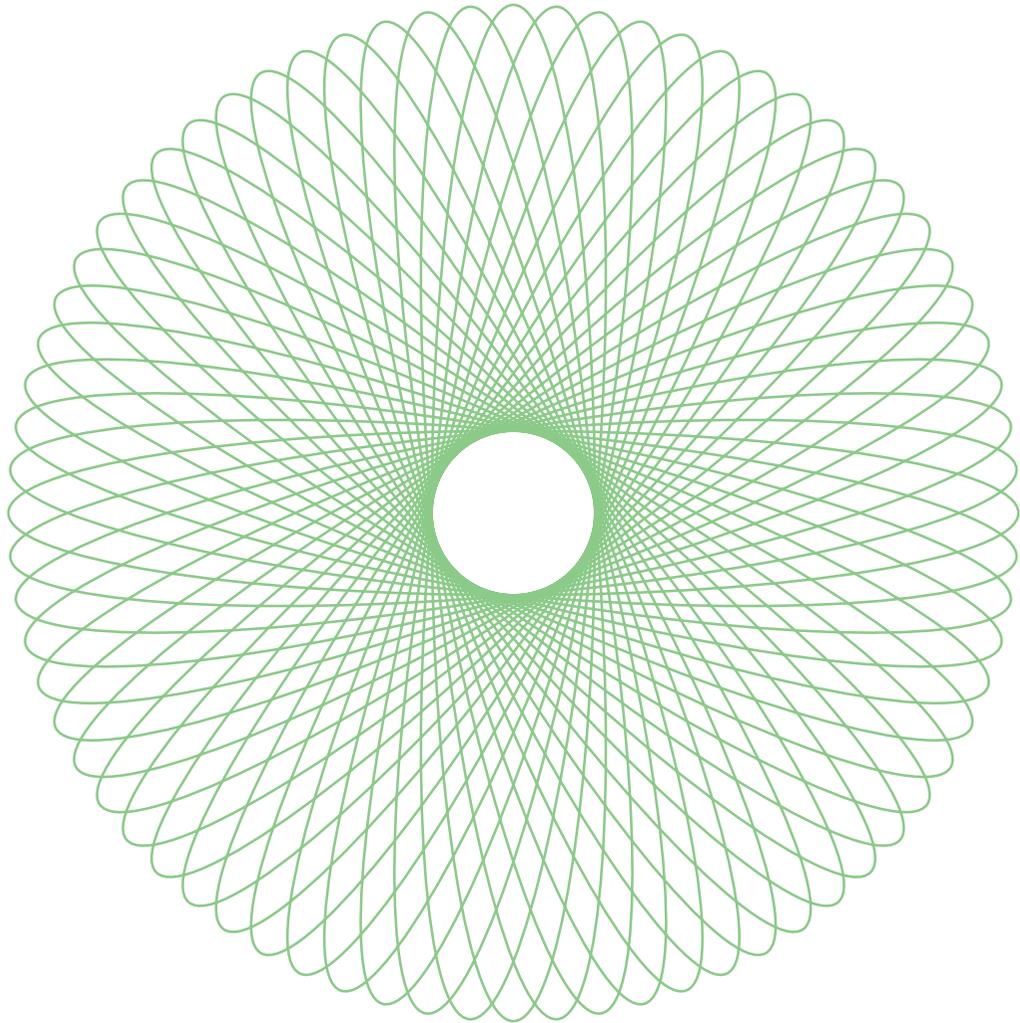
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²⁷ USAID, "Corruption Assessment: Timor-Leste," *USAID*, 15 September 2009, http://pdf.usaid.gov/pdf_docs/PNADQ697.pdf

²⁸ Available at www.mof.gov.tl

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MEXICO





MEXICO

Competition, Transparency and Consumer Welfare in the Design of Public Procurement Procedures

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ABSTRACT

The design of adequate procedures for public bids and procurement promotes greater competition amongst suppliers of goods and services as well as considerable savings for local and national governments, allowing for the supply of higher quality goods and services, and greater infrastructure development, thus improving social welfare. This article delves into the relationship between collusion and corruption and the challenges implied for the design of mechanisms that ensure the integrity of public procurement procedures. The selection of various parameters affects incentives to compete or collude, as well as opportunities for corruption. Factors such as bid frequency and amount, joint allocation rules, sequential or simultaneous biddings of different demands or projects, and allocation criteria, may all foster or inhibit competition in procurement, and increase or reduce potential legal costs and renegotiations. Transparency can prevent corruption while the disclosure of sensitive information can encourage collusion; therefore, a systemic approach is required to prevent effectively both problems. Various efforts and sanctions to prevent collusion in public procurement in Mexico are reviewed.

Introduction

Public procurement procedures must ensure the best possible conditions for the supply of goods and services, in terms of price, quality and service to benefit taxpayers and the public in general. Any act of corruption by government officials and any collusive agreement among bidders impose an overcharge and eliminate the benefits of competitive public procurement. High quality infrastructure and public services are critical for the public's welfare, which depends heavily on the transparency and integrity of public procurement processes. The imposition of policy objectives as opposed to those of public procurement - such as the endorsement of local or national suppliers or the promotion of certain companies - must always be subject to strict scrutiny, to thus prevent the abuse of interest groups. In practice, abuse by the lobbying of legislative processes may provide interested groups with exclusive advantages similar to those derived from conspiracy and corruption, hence damaging public interest.

Collusion and corruption entail severe consequences on competition, market efficiency and national and local government budgets, and seriously affect both taxpayer and consumer welfare. Furthermore, the cost of the abuse of public procurement procedures is not reduced to its economic impact but also affects democratic governance, as a widespread perception of impunity and systemic corruption in public procurement can weaken the rule of law. Pervasive corruption and impunity encourage further illegal behavior, while the economic impact of such conspiracy rises ex-

ponentially, thus promoting an economy based not on competition and innovation, but on the development of a network of clientelism to obtain favors and privileges.¹ Likewise, granting advantages in public procurement regulation to pressure groups can weaken the trust of citizens in public institutions and significantly obstruct competition in procurement processes.

It is difficult to overstate the importance of public purchases of goods and services. In Mexico, public sector activity accounts for about 18 percent of GDP - with the Federal Government comprising 2.9 percent of GDP, public companies 8.7 percent and the health sector 1.3 percent of GDP. The principal purchasers, among federal entities, are Mexican Petroleum (Pemex, acronym in Spanish), which represents almost half of all federal purchases; the Federal Electricity Commission (CFE, acronym in Spanish) at 11.3 percent; both the Mexican Social Security Institute (IMSS, acronym in Spanish) and the Social Security Institute for State Workers (ISSSTE, acronym in Spanish) account for ten percent; and the Ministry of Communications and Transport accounts for five percent. The importance of local government procurement activities has increased significantly during the past decade, with the size of state and municipal government activity amounting to 5.5 percent of GDP.

Public bids and procurement processes in Mexico are subject to Article 134 of the Constitution and to the Procurement, Lease and Service Law, among other regulations.² In general, procurement regulation includes, among its main procedures and characteristics, lowest price sealed envelope bids and public bid opening;³ multiple suppliers and joint bids; the inclusion of

¹ It has been argued that corruption and collusion are favored by scale economies—once companies acknowledge the effect of these conducts and carry them out in a particular market, the costs to replicate them in other markets decrease dramatically. See Frédéric Boehm, and Juanita Olaya, 2006, "Corruption in Public Contracting Auctions: The Role of Transparency in Bidding Processes".

² Article 9 of the Federal Law of Economic Competition (FLEC) regulates and sanctions so called absolute monopolistic practices.

³ The reform of the Procurement Act in May 2009 introduced the possibility, in some instances, of multi-stage auctions combining the price sealed auction and a reverse auction, allowing bidders in public auctions to offer additional discounts after their initial bids are opened.

reference prices; exclusive bids for national suppliers; and reverse auctions in trade agreements.⁴

Collusion and Corruption

Corruption and collusion in public purchases, though different in nature, are entwined. Hence, an integral approach to effectively prevent them is needed. In general, collusion consists of *horizontal agreements* among competitors with the purpose of fixing prices, segmenting markets or agreeing in bid offerings. Mexican law considers all kinds of collusion among competitors as absolute monopolistic practices, or *per se* offenses. This implies that a lack of damage does not constitute a legitimate defense and the enforcing authority is not required to prove damage to apply a sanction, as the potential effect of these conducts cannot be any other but to increase prices or restrict supply, to the detriment of competition and consumers. Agreements among bidders to limit competition - whether by fixing bid amounts, rotating winning positions, or agreeing on market share allocation - may be sanctioned with fines that amount to up to ten percent of the company's annual income and even criminal penalties for the individuals responsible.⁵ Public procurement, characterized by more strict and predictable procedures than those adopted by private entities, is particularly vulnerable to collusion.

Corruption has been defined traditionally as the *abuse of public power to obtain a private benefit*⁶ and arises from a principal-agent problem in the sense that the government entity (principal) must depend on a group of officials (agent) to comply with its mandate and pur-

poses, whereas the agent has objectives that differ from the principal. This definition should not give the impression that corruption only occurs in public sector entities. Private entities, especially complex organizations, may be and frequently are victims of corruption of their own executives, who take advantage of the responsibilities granted to them.

Pervasive corruption and impunity encourage further illegal behavior, while the economic impact of such conspiracy rises exponentially

Unlike collusion, corruption in public procurement involves a *vertical relationship* between a public official responsible for the design, execution or follow up to a bidding procedure, and one or several bidders. Corruption and collusion share the same effects – to lessen market competition, increase prices, inhibit the quality of the services, and damage taxpayer welfare – by increasing the public expenditure needed to acquire the same amount of goods and services.

A third form of action against the integrity of public procurement that is not necessarily illegal but in general not transparent, is the lobbying before legislative and executive bodies, to limit the competition and oversight of public procurement. These efforts to weaken competition, generally justified by rhetoric on legitimate public policy purposes such as national industry promotion, must always be subject to public scrutiny. In its extreme form, the political manipulation of federal or state legislatures to alter the rules of bidding procedures can indeed be considered a form of political corruption.

The risks of collusion and corruption in public purchases are systemic and tend to reinforce each other. In consequence, the design, management and control of public procurement

⁴ For example, Chapter Ten of the North American Free Trade Agreement (NAFTA) requires Mexico to accord non-discriminatory, "national" treatment to American and Canadian suppliers in public sector procurement. However, the parties reserve the right to favor domestic suppliers for programs designed, for example, to benefit small and minority business. Similar provisions are part of trade agreements signed by Mexico with other countries like Chile, Colombia, Japan the European Union and its member states, among others. It should be mentioned that state and municipal governments are not subject to these trade agreements obligations.

⁵ Amendments to the FLEC published in May 10, 2011.

⁶ Tanzi (1998) provides an interesting synthesis on how corruption is addressed in other parts of the world.

Lobbying before legislative and executive bodies, to limit the competition and oversight of public procurement, must always be subject to public scrutiny

processes must also incorporate systemic measures for transparency and competition.⁷

The design stage is critical. Corruption and collusion can be facilitated in a number of ways. This includes the exclusion of potential bidders either through tailor-made restrictions to favor a bidder, limitations that unnecessarily reduce the number of potential bidders, burdensome administrative requirements that can only be fulfilled by those with access to privileged information,⁸ or through general restrictions, for example, against foreign companies or out-of-state companies. The bid design and the acquisition process must encourage wide participation of qualified bidders. It is important to be informed during the pre-tender phase about market characteristics, the dynamics of its competition and whether there are unique factors that facilitate collusion among competitors.⁹ If possible, it is desirable to consolidate purchases with other government bodies in order to prevent any incentives for a collusive agreement.¹⁰

⁷ Boehm and Olaya (2006) work, quoted above, emphasize the importance of a systemic approach.

⁸ For example, the adoption of very short times for response to certain administrative requirements may unduly benefit incumbents with previous knowledge of the proceedings as opposed to potential entrants, above all foreign suppliers.

⁹ Experience suggests that among the conditions that ease collusion are high market concentration, price as well as other contractual terms, product homogeneity, symmetry among the competitors in terms of size, costs and technology, frequent interaction and the existence of communication channels among bidders, as well as frequent low volume orders, and barriers to entry for new bidders. See Ivaldi et al, 2003 "The Economics of Tacit Collusion" and OECD, 2008, "Fighting Cartels in Public Procurement".

¹⁰ Bulky and infrequent bids raise the benefit of breaking a collusive agreement (to obtain a larger purchase order) and reduce the no-compliance costs (retaliation from other cartel members in the next bid will be less likely).

The execution stage requires clear criteria to select a winner as well as safeguards to disqualify companies that collude. A high level of discretion for public officials in selecting bid winners, for example through complex allocation criteria, aggravates the risk of corruption and discourages future participation of potential competitors.¹¹

Following the allocation stage, transparent, robust and effective means to challenge the decision and to avoid groundless renegotiations must be provided. A potential factor for facilitating corruption and inhibiting competition comes from the expectation of some bidders to reach renegotiations that reduce the winner's obligations and compliance cost.¹²

In an October 2010 publication of the Organisation for Economic Co-operation and Development (OECD) key factors to consider when working, to preserve the integrity of public procurement were highlighted:¹³

- Although collusion and corruption are distinct problems, they both constitute threats to transparent and efficient public procurement, and are frequently entwined, with mutually reinforcing effects;
- Because of its distinctive characteristics –like massive amounts of purchases, regulatory restrictions that make procedures predictable and the type of sectors where it is focused -public procurement is always vulnerable to corruption and collusion, more so than private procurement;
- Effectively tackling the risks of corruption and collusion does not constitute mutually exclusive goals. In some instances there will be conflicting results. Measures such

¹¹ The OECD, for instance, has stated, "All selection criteria affect the intensity and effectiveness of competition in the tender process. The decision on what selection criteria to use is not only important for the current project, but also in maintaining a pool of potential credible bidders with a continuing interest in bidding on future projects. It is therefore important to ensure that qualitative selection and awarding criteria are chosen in such a way that credible bidders, including small and medium enterprises, are not deterred unnecessarily," *OECD, Guidelines for Fighting Bid Rigging in Public Procurement*, 2009.

¹² Guasch (2004) includes a detailed discussion of the vices that lead to a renegotiation of conditions and its risks as well as its effects.

¹³ OECD, "Collusion and Corruption in Public Procurement." *OECD Policy Roundtables*, 2010.

as small tenders and transparency may aggravate collusion; small and frequent tenders may facilitate collusive bid rotation; and transparency on prices and other commercial conditions may also facilitate collusion. Therefore, effective measures to prevent both problems must be included in the design and execution of the tender – the role and effects of transparency, in particular, must be addressed;

- Swift and effective cooperation among agencies charged with enforcing competition and anti-corruption legislation is crucial to ensure public procurement integrity;
- In addition to the enforcement of competition law and procurement regulations, specific measures are required to ensure integrity in such processes, such as opening the market to international bidders, redesigning processes to maximize transparency without facilitating collusion through the disclosure of sensitive commercial information, the use of electronic bids, training of procurement officials in best practices, expert data evaluation, and effective procedures for appeals and auditing;
- Effective prevention of corruption and collusion requires a genuine likelihood of detection and severe sanctions, so that expected punishment surpasses possible gains derived from any such practices;
- It is essential that key safeguards are implemented, such as the adoption of best practices in the design and management of bids and procurement processes, intense advocacy by both the competition and auditing authorities to promote sound procurement, increased awareness amongst public officials of their obligations for competition and transparency, and permanent and effective monitoring measures.

A recent study carried out by the Mexican Institute for Competitiveness (IMCO, acronym in Spanish), offers an index of the quality of federal and state procurement regulation in Mexico based on more than 40 indicators related to barriers to entry in the pre-tender phase, the transparency of selection processes, and the existence of sound auditing and means

available to challenge decisions after bidding processes. The study acknowledges improvements in Mexican procurement regulations at the federal level, but also addresses some obstacles for competition, in particular restrictions for foreign suppliers and the lack of mechanisms to inhibit collusion in bidding processes. This includes, for example, the lack of a requirement for participants to announce beforehand the intention to subcontract services to another company.¹⁴

With regard to state legislation, the IMCO's study highlights the wide variation of local procurement standards and the need to improve, to varying degrees, legislation in all states.¹⁵ The main problems underlined in the study that occur prior to the bidding stage relate to factors that limit the scope of potential bidders. For example, bids open to international suppliers are not the general rule,¹⁶ national instead of international standards are often imposed,¹⁷ the option to limit biddings to local suppliers is available, and the obligation to consult a particular trade association about qualifications for potential bidders or other issues - a consultation that almost always tends to favor incumbents – is also common. In the bidding stage, the main problems relate to the lack of an accurate definition in many state laws of exceptions to bidding methods, the lack of procedures to ensure competition in restricted invitation tenders, the failure to adopt random selection procedures in the case of a tie, and the setting of minimum prices and preferences

¹⁴ Instituto Mexicano para la Competitividad, "Competencia en las Compras Públicas: Evaluación de la Calidad de la Normatividad Estatal en México", 2011.

¹⁵ In a scale from 0 to 100, the federal law obtains 70 points according to IMCO's index while local laws and regulations average 46 points and range from a low of 23 to a maximum of 61 points among the different states.

¹⁶ As mentioned before, local governments are not subjected to trade agreement obligations to accord non-discriminatory, "national" treatment in public sector procurement to suppliers of goods and services from those countries which had signed free trade agreements with Mexico.

¹⁷ Setting national or local standards, as opposed to internationally accepted standards, imposes an additional barrier to entry to foreign suppliers.

for local suppliers.¹⁸ In the stage following the bidding process, the study emphasizes the lack of mechanisms for appeals in some state laws, as well as an absence of effective auditing procedures, and limitations to social witness participation.¹⁹

Transparency, Corruption and Collusion

A critical step towards preventing wrongdoings in public procurement is to take advantage of the potential of transparency to inhibit corruption, while importantly ensuring at the same time that the disclosure of information is not used to promote and sustain collusion. Transparency acts as an effective deterrent to corruption as it limits discretion for public officials in procurement decisions, and subjects the process to greater accountability. Further, transparency reduces asymmetries in information, allowing all bidders to become witnesses of possible irregularities and, if proper challenge mechanisms are in place, they will have the possibility and the incentives to report them.

In spite of the above-mentioned effects of transparency on inhibiting corruption, it must be also recognized that transparency may ease collusive arrangements. The feasibility of any collusive agreement depends on the possibility to monitor compliance to its terms and conditions. If compliance cannot be monitored, bidders will have greater incentives to break the agreement. Therefore, the design of effective public procurement processes requires that safeguards for transparency be defined so that opportunities for corruption are reduced without fostering collusion.

¹⁸ In case of a tie, preference is given for local producers within a certain range defined in the state law. For example, if a local producer offers a price up to five percent higher than the lower bid, 15 states will award the contract to the local producer—in five states this range goes as far as 10 percent.

¹⁹ The social witness is a representative of the civil society of recognized professional and ethical prestige who participates in the bidding as an external observer, works with the organization participating in the procurement to devise the terms of tender and makes recommendations to promote transparency and efficiency. Once the procedure is completed, the social witness releases public testimony to describe the process and to offer recommendations for future improvement. See World Bank (2007), p. 105-106.

The Prevention and Sanction of Collusion in Public Procurement in Mexico

The Federal Law of Economic Competition (FLEC, acronym in Spanish) considers collusive agreements amongst competitors in bids as *absolute* or *per se* monopolistic practices. That is, the conduct itself is penalized even without full proof of the specific damage resulting from it. Over the past decade, the Federal Competition Commission (CFC, acronym in Spanish) has investigated and sanctioned several public procurement collusion cases, particularly in the supply of medicines and medical equipment and materials to the public health sector. It is important to recognize the characteristics of public tenders that may facilitate collusive behavior. For example, it is common to find that biddings reserved only for national companies with multiple suppliers' clauses make public procurement more vulnerable to anticompetitive agreements.

In 2010, the Commission sanctioned six pharmaceutical companies for bid-rigging on IMSS auctions of insulin and different types of serum.²⁰ The Commission investigated bid offerings in tenders organized by IMSS over the period from 2002 to 2006 and a pattern of rotating winning and losing bids was found, while the use of multiple award contracts, to its full extent, was also discovered.²¹ The pattern of rotation and multiple award contracts could only be explained by conspiracy amongst competitors. The companies knew which price bid would win and which one would lose, and followed a rotating pattern that proved the existence of an

²⁰ The Instituto Mexicano del Seguro Social (IMSS) is the main provider of social security services in Mexico and the largest purchaser of medicines; The public version of the ruling (IO-003-2006), including bid offerings that show a rotation pattern, may be found in the Federal Competition Commission website: http://resoluciones.cfc.gob.mx/Docs/resolucion_final_medicament.PDF

²¹ In case of a tie, a multiple award clause specifies that the contract may be awarded to the bidders that offered similar terms. This mechanism was abused by the participants in the collusive agreement.

agreement.²² It was verified from phone records that the pharmaceutical companies involved kept in touch during the investigated period and they also maintained contact through their interaction in a national pharmaceutical trade chamber.²³ As a result, the colluding companies secured unusually high contract prices, disproportionate revenues and even, at some points, held similar market shares.²⁴

Even though flaws in the design of bidding processes do not excuse the participants for collusion, it is important to recognize three procedural aspects in the design of the above-mentioned pharmaceutical example. First, the fragmentation of the IMSS's purchases over the investigated period, the frequent regional and small bids, and the consistency the bids it offered, all combined in the favor of bid-rotation. This further decreased incentives for winning tenders due to future costs of breaking an agreement. Moreover, the awarding of multiple contracts facilitated collusion due to the number of bids that could be shared by companies. Second, the IMSS procedure did not take into consideration the participants' frequent interaction as a result of market overlap and their close contact through membership to the same trade association and other means, which created a favorable environment for collusion. Finally, several restrictions to the participation of foreign bidders provided the necessary protection to shield the illegal agreement. This lat-

ter point is a major factor for the viability and success of the cartel and the significant damage caused for the public supply, and illustrates the importance of avoiding restrictions to the number of bidders that may participate in the market. Once foreign bids were allowed, the offered prices in insulin bids decreased from \$154.90 pesos (US \$12) to around \$60 pesos (US \$5) per unit.

It must be also recognized that transparency may ease collusive arrangements

While it is important to ensure proportionate and deterrent sanctions for collusive agreements in public procurement, it is also important to develop mechanisms for all stages in the procurement cycle to prevent such behavior, from the design and execution of a bid, through to its award and implementation. In this regard, the CFC, the Ministry of Public Administration (SFP, acronym in Spanish), with the support of the OECD, have carried out several efforts to prevent collusion and corruption in public procurement.

An example of these coordinated efforts is the *Memorandum of Understanding* signed in 2011 by the IMSS, CFC and the OECD, through which the latter is developing an analysis of current laws and regulations for IMSS procurement; providing recommendations to improve IMSS regulations and commercial practices; and training procurement officers on the design of sound bidding procedures and the detection of unlawful practices. The IMSS was the first public agency in Mexico to formally commit to adopt the OECD's Guidelines for fighting Bid Rigging in Public Procurement and adjust its procurement procedures accordingly. Other agencies have shown interest to follow suit.

22 For instance, out of a sample of 126 bidding processes of insulin from 2003 to 2005, it was found that in 106 cases, the winning offer was a price fixed between MXN\$154.90 (US\$12) and \$155.00 per unit (in 99 cases the offered price was \$154.90) and in 89 cases the losing offer was fixed between \$157.50 and \$160.00 per unit (in 60 cases the price offered was \$158.00). The companies clearly knew the \$154.90 offer would always win and the offer fixed at 158 pesos would always lose. Even aware of this information beforehand, companies rotated the offers. In the appendix on pages 575 and 578 of the mentioned ruling, a detailed report of the offers in the insulin bidding processes can be found and the rotation pattern may be analyzed.

23 The companies sanctioned for the insulin collusion were Eli Lilly y Compañía de México, S.A. de C.V.; Laboratorios Cryopharma, S.A. de C.V.; Probiomed, S.A. de C.V., and Laboratorios Pisa, S.A. de C.V. At the same time Laboratorios Pisa, S.A. de C.V., Fresenius Kabi México, S.A. de C.V. and Baxter, S.A. de C.V. were sanctioned for agreeing on prices offered in several types of serum. The case is currently under judicial review.

24 For example, in the case of serum, the bidding rotation led to a market share of 32% for Baxter, 31% for Fresenius and 30% for Pisa over the period from 2003 to 2006.

The OECD analysis of the IMSS's commercial practices, highlights several aspects that may be useful for other public agencies.²⁵ One set of recommendations stresses the need to develop a well-designed and flexible commercial policy based on market studies; change tender mechanisms; vary the timing of issuing tenders; develop and update a database of submitted bids in order to identify and monitor suspicious bidding patterns; and, above all, take advantage of its own buying power to attain better prices, terms and conditions.

A second set of recommendations concerns avoiding actions that may favor or facilitate collusion, for example, the allowing of joint bids only when there are concrete and verifiable pro-competitive justifications, the splitting of contracts among multiple suppliers only as an exception rather than a general rule; the requiring of all bidders to disclose and justify any intention to use subcontractors; and the obligation of bidders to submit a *Certificate of Independent Bid Determination*,²⁶ and the assessment of the type of information published and whether or not such it may foster collusion. Importantly, the OECD analysis stresses the need to adopt these recommendations in a flexible manner since bidders who try to collude will "...react to policy changes and explore new, more inventive and secretive ways to collude."²⁷

The IMSS experience, while it constitutes its starting point, is not an isolated instance of procurement reform among public agencies in Mexico. For example, the ISSSTE is in the process of implementing a similar program also with the support of the OECD and CFC.²⁸ Furthermore, through CFC and SFP collaboration, a program to train procurement officials of the federal admin-

25 OECD, "Fighting Bid Rigging in Public Procurement in Mexico," *A Secretariat report on IMSS' procurement regulations and practices*, 2011, <http://www.oecd.org/dataoecd/52/28/49390114.pdf>

26 The advantages of this Certificate are that it informs bidders that collusion in an illegal practice, that the agency is aware of possible risks and makes prosecution easier for the filing of a false statement.

27 See note 26

28 ISSSTE is the provider of health and social services for public sector employees and is also a major purchaser of medicines and medical supplies.

istration was established in 2009 and is expected to create awareness about the importance of preserving the integrity of procurement, preventing collusion and adopting all the measures required to ensure best value for public money by embracing best international practices.

The need for improvement in public procurement has also been recognized by local governments. An example of this is the cooperation agreement through which the CFC and the OECD support the Government of the State of Mexico in the application of guidelines to prevent bid rigging in public procurement. The agreement has two main objectives: first, to produce a report on local procurement legislation, the relevant regulation, the practices used by the State Government, and their compliance with best international practices; second, to train government officials on the design of bidding processes to reduce collusion and the prompt identification of possible collusion. The states of Campeche, Guerrero and Zacatecas have started similar projects with the support of the IMCO.

Conclusions

Transparent and competitive public procurement increases social and consumer welfare, ensures sound national and local government budgeting, stimulates an economy based on innovation, and strengthens democratic governance. Therefore, it is essential to develop a well-designed, permanent and coordinated strategy to prevent collusion and corruption.

The development of competitive and transparent public procurement processes requires a unified and strategic approach. First of all, and prior to the design of the process itself, it is essential to train procurement officials on best international public procurement practices, to carry out comprehensive research and gain a sound understanding of market conditions, to conduct an assessment of the existence of conditions that may foster collusion, and to select the most appropriate bidding mechanism in terms of both auction type and instrument.²⁹ Once the proper

29 With type meaning sealed envelope bid, reverse opening, direct awarding in competitive conditions, etc. and instrument being electronic, distant, etc.

planning has been completed, it is necessary to adopt a bidding procedure that eliminates unjustified restrictions to the participation of qualified bidders, measures to promote transparency and thus avoid excessive discretion for procurement officers without disclosing sensitive information, and to take full advantage of the government's buying power for the benefit of public interest while avoiding mechanically adopting characteristics that may ease collusion (joint offers, multiple award contracts, subcontracting). Once the bidding process has been completed, all relevant information should be preserved and a database should be developed to enable analysis of results and the detection of irregular patterns. Finally, throughout the bidding process, close interaction and continuous consultation with the competition authority and the controller's office must be maintained to take advantage of every opportunity to detect early potential risks, to eliminate unnecessary restrictions to competition and to correct any aspects that may open room for discretionary decisions.

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MEXICO

Distortions and Gaps in Mexico's Public Procurement System

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ABSTRACT

This article aims to analyze the legal framework for the public procurement process at the federal and state level in Mexico. Examining the rules under which the government acquires goods and services is a fundamental step to determine how transparent and competitive the government is when purchasing with taxpayer money. For millions of Mexicans, the correct or incorrect use of these resources represents the difference between walking into a public hospital and walking out with the needed treatment, or having to go elsewhere to acquire them at triple the price; or between having clean, secure and reliable public transportation or riding in dirty and unsafe buses or subways. Throughout this document, various examples are presented in order to show the weaknesses and challenges that exist in public procurement frameworks in Mexico. In conclusion, the authors suggest how urgent it is to move towards a solid and consistent regulatory framework for acquisitions, leases and public services, as this will naturally determine the way government agencies design and carry out such processes.

The Lack of Competition and Transparency in Mexico's Public Procurement System

Examining the rules under which the government acquires goods and services is a fundamental step to determine how transparent and competitive the government is when purchasing goods and services with taxpayer money.

For millions of Mexicans, the correct or incorrect use of these resources represents the difference between walking into a public hospital and walking out with the needed treatment, or having to go elsewhere to acquire them at triple the price; or between having clean, secure and reliable public transportation or riding in dirty and unsafe buses or subways; or even between having a government agency with the necessary equipment to work and issue documentation or one that cannot operate because it lacks resources.

With this in mind, the Center of Research for Development, A.C. (CIDAC) and Transparencia Mexicana (TM) analyzed the legal framework that supports the public procurement process at the federal and state level in Mexico. The publication of this article “The Lack of Competition and Transparency in Mexico's Public Procurement System” constitutes the first step of a joint initiative that will seek to pave the way for civil society to become a more knowledgeable and active watchdog of public procurement processes at the federal and state levels in Mexico.

Why Analyzing the Legal Framework for the Public Procurement System Matters

The main objective of this study is to identify the differences that exist between the laws of Mexico and international best practice, as well as the gaps between the different federal and state laws within Mexico. This type of analysis not only helps to identify areas for improvement in each Mexican state, but also provides civil society with the kind of understanding they need to truly hold their governments to account during the purchasing process.

How can citizens hold their governments to account? They need to be able to do three things: 1) to monitor the actual procurement processes; 2) to request information from government offices as they begin the procurement process; and 3) to understand the incentives created by the legal framework in the design of public procurement processes, as laws often allow for loopholes which make these processes prone to corruption and little competition.

The 32 local state procurement laws should have at least one thing in common: the responsible and rational use of public resources. To achieve this objective – maximum value for money – it is essential to build a set of rules that will provide the correct structure to promote a competitive and transparent procurement system.

If the rules are not clear, areas of discretion arise and the probability of corruption in the procurement process increases, as well as the probability that the good or service acquired will be deficient, more expensive than it should be, or that the social objective will not be met. If, on the other hand, the rules are well established and criteria for efficiency and integrity are upheld, then the probability of acquiring goods and services of good quality and at an appropriate price increases.

While there is no single correct model in the world for government purchases, and thus no perfect standard to measure progress in this field, international experience can neverthe-

less help Mexico find a clear path towards better use of its public resources. Institutions such as the Organization for Economic Co-operation and Development (OECD), the World Bank, the European Commission and the Inter-American Development Bank (IDB) have focused on documenting best practices on public procurement around the world.

In fact, employing the principles and recommendations set forth by these organizations, Mexico reformed its Federal Law of Acquisitions, Leases and Public Services in May 2009. The reform aimed at creating a legal framework that would allow the Federal government to use public procurement as a lever for development, outlining clear rules and criteria for planning, programming and budgeting. By harmonizing strategies and criteria for all agencies to which the law applies, the complexity of the procurement process at the federal level was reduced and new schemes aimed at seeking greater efficiency and effectiveness in these processes were incorporated. The reform provided greater certainty to all stakeholders in the process.

However, at the local level few reforms have taken place in the past few decades, and problems can still be observed in planning and budgeting, as well as excessive regulation, which perpetuate favoritism in public procurement processes. The shortcomings and limitations in the use of electronic bidding tools, as well as the absence of an effective evaluation system, bring as a result public purchases with little or no advantage for local development, nor the rational use of public local resources. The first step towards turning procurement processes into a state development platform is to identify the strengths and weaknesses of the rules, which govern them.

What Did We Evaluate?

Being a federation, Mexico has recognized the authority of each state government to conduct procurement processes through mechanisms deemed appropriate by the state itself. In 2009, state governments spent more than 60 billion pesos (US \$4.3 billion) in the pro-

urement of goods and services, roughly 9.8 percent of their revenue, and did so under 32 different legal systems.¹ This is not only confusing for the companies that wish to operate in various states, but it also represents an obstacle for civil society to truly hold its government accountable.

There are three types of laws in Mexico governing public procurement entities: the laws of acquisitions, leases and public services at the federal and state level, which cover the purchase of goods such as bottled water for government offices, medicines for hospitals, and so on; the public works laws, which for example regulate the construction of bridges and roads; and, finally, laws governing public-private partnership, which set the rules for long-term investments, such as the construction of government buildings or the purchase of energy for public lighting. This first study covers only the laws of acquisitions, leases and services for two reasons. First, though much smaller than public works, transactions under the law of acquisitions are carried out by all local governments, often on a daily basis. Furthermore, not all local governments have laws governing public-private partnerships.

Based on the experience of more than 20 countries,² and on the OECD's "Guidelines for Fighting Bid Rigging in Public Tenders," the procurement guidelines of the European Union,³ Global Integrity's "México: Integrity Indicators Scorecard",⁴ the World Bank's Public Expenditure and Financial Accountability initiative (PEFA),⁵ and the Actionable Governance Indi-

1 Instituto Nacional de Estadística y Geografía, "Datos de Finanzas Públicas Estatales," *INEGI*, www.inegi.gob.mx

2 Policy Round tables: "Collusion and Corruption in Public Procurement," *OECD*, 2010, <http://www.oecd.org/dataoecd/35/16/46235399.pdf>

3 Directive 2004/17/EC and 2004/18/EC

4 Global Integrity, "México: Integrity Indicators Scorecard," *Global Integrity Report*, 2011, <http://www.globalintegrity.org/report/Mexico/2011>

5 World Bank, "Public Expenditure and Financial Accountability", *WB*, 2011, <http://web.worldbank.org/WBSITE/EXTERNAL/PEFA/0,,contentMDK:22677273~hIPK:7334624~menuPK:7313083~pagePK:7313176~piPK:7327442~theSitePK:7327438,00.html>

cators Data Survey,⁶ CIDAC and TM designed a model to evaluate procurement laws, leases and services in the 32 Mexican states, and based on four basic principles:

a. Maximum value of money. It is not only about buying at the lowest price but about acquiring the best possible good or service the market can provide to meet the objectives set out by the institution. Thus, it is about prioritizing the quality of the goods or services purchased, something that should be reflected in savings and long-term benefits.

b. Promotion of competition. A purchasing procedure that ensures competition amongst suppliers should provide incentives for market participants to offer goods or services at the best cost-quality ratio. In addition, competition in public procurement motivates innovation and higher productivity by the companies involved in the process.

c. Efficient and effective processes. The rules of the game must fulfill two functions: 1) they should establish conditions and appropriate assumptions for the use of different procurement procedures; and 2) they should be clear and fair for all participants, in order to minimize transaction costs and achieve better results.

d. Integrity and maximum publicity. Only through achieving the correct balance between transparency and confidentiality, can governments establish truly competitive processes while fostering an exercise of integrity and accountability.

When civil society can determine if and how their laws promote these four principles, they will be able to make more specific recommendations for the kinds of changes needed to improve the public procurement system, as well as to watch out for corrupt behavior.

How State Laws Fare in Terms of Maximizing Value for Money

The first of the four principles that should govern any procurement process is maximizing value for money. In order to ensure this, the legal framework must provide criteria and requirements to guarantee that government entities buy under the best possible conditions, granting priority to proposals that bring the greatest benefit for the government and the community, and not only focus on obtaining the lowest price. While these criteria and requirements are quite clear in the Federal Law, our analysis indicates this is not the case at the state level. For example, many states laws allow for budget thresholds to be easily exceeded, and for government agencies to make unnecessary purchases with little consideration of the real needs of the population.

For example, 22 state laws allow government agencies to exceed the budget threshold stated in the law, and most (17 of those 22) do not provide a procedure for requesting an increase of the approved budget. Moreover, only half of the states (16) have rules to prevent the final cost of a tender to be divided into two identical operations assigned to two different firms, making it easy to exceed the budget threshold without having to ask permission to do so. Both observations point to state governments with an enormous capacity to spend public resources at their own discretion. As such, citizens should watch out for the existence of such rules, on increasing budgets and splitting tenders, in order to monitor the results of purchasing processes.

In addition, 15 of the 32 states have laws that designate a maximum amount that can be spent for direct sourcing or selected tendering, which gives enormous discretion to government officials when determining which process – a tender or a direct source - to use for the procurement in question. The result is that authorities will continually decide to use direct sourcing regardless of the amount of money at stake. Furthermore, the laws of only seven states require the undertaking of feasibility studies to determine the appropriateness

⁶ World Bank, Procurement indicators available at: <https://agidata.org/Site/Search.aspx?q=data+survey>

of making a purchase versus taking a lease. By not requiring justification for the decisions made by officials, the risk of inefficient use of taxpayer money increases.

Finally, 20 states do not require government entities by law to measure the feasibility of a project, nor the project's contribution to the issuing institution's goals and objectives. In other words, they open spaces for discretion as no one – neither the government official nor the supplier – is required to prove the capacity of the contracted provider to deliver the services or goods to be purchased, nor the need for such services or goods.

In terms of ensuring maximum value for money, civil society can monitor the budgets government entities assign to public procurement, can document unscheduled changes in any given project, and can request evidence to prove any purchase made does indeed contribute to the institution's goals.

How State Laws Fare in Terms of Promoting Competition

Competition between suppliers is essential so that the government, and therefore the taxpayer, can get the most value for their money in public procurement. This implies that the laws governing the procurement process should provide clear and fair criteria to all potential participants and must provide a system both to detect collusion between suppliers and establish penalties for committing such acts. In Mexico, neither the federal nor state laws favor the principle of promoting a level playing field for all participants in procurement processes. On the contrary, the laws governing public procurement do not promote fairness in the allocation of contracts and most do not include an obligation to ensure results are derived from competitive processes.

Less than a third of states (10) require that government entities perform market studies prior to designing a procurement process. That is, entities operate with incomplete information (often on purpose), which can bring adverse results for the issuing agencies. Moreover, the vast majority of states (27) do not

include any obligation in their laws to confirm that prices submitted in proposals are derived from competitive processes. Only five states have laws requiring this important step to prevent collusion.

Less than a third of states require that government entities perform market studies prior to designing a procurement process

Only six states include in their laws a penalty for communication between potential bidders during the bidding process, and just over a third (12) regulate communication between consultants and suppliers. The absence of such rules increases the incentives for participants to reach collusive agreements in the process.

In addition, only five states specify ceilings for financial guarantees from participants.⁷ This is important because a financial guarantee, when too high, may represent a barrier to entry for participants. As a result, the level of discretion increases, in turn leaving to government officials the flexibility to set discretionary parameters to favor certain candidates over others. Finally, the laws of 26 states do not require market information to be used to determine an acceptable or desirable price in tenders, thereby increasing individual discretion when determining the contract amount.

Civil society has a large role to play with regards to demanding that processes be competitive. Not only can they monitor governments and their processes, but they can also push

⁷ "Guarantees whereby the tenderers ensure the fulfillment of their liabilities in the contract award procedure (various forms of pledging securities, movable property, mortgages, bills of exchange, guarantees given by other legal person possessing adequate creditworthiness, bank guarantees, insurance policies, etc.)." From: www.oecd.org/dataoecd/3/62/40511974.pdf

for companies to abide by their own internal guidelines on ethics or compliance in public procurement.

How State Laws Fare in Terms of Ensuring Processes are Effective and Efficient

Without an efficient process with clear and fair rules for all participants, one can hardly expect public procurement to be effective in meeting the needs of the states and their inhabitants. The aim should be to minimize transaction costs, to establish appropriate conditions and, therefore, to obtain the best possible result from procurement processes. The 2009 reform of the federal procurement law transformed many of the assumptions that previously hindered the efficiency of government procurement. At the state level, there is still a long way to go.

Many operational obstacles remain, as only eleven states require the creation of framework contracts in their laws, while only eight set out general guidelines for the technical specifications that must be considered.⁸ This encourages the proliferation of ad hoc contracts for each procurement process, which promotes greater discretion and increases transaction costs for both suppliers and contracting entities. Moreover, only nine states mandate in their laws the use of electronic bidding systems – via CompraNet in Mexico – and specify what information needs to be held in those electronic systems. Most choose not to use these instruments, thus limiting information both for potential bidders and civil society actors interested in monitoring the processes.

In terms of efficiency, only seven states allow for reverse-auctions as a possible tendering mechanism – a procurement mechanism that requires selecting the proposal with the

lowest price once a set of technical criteria have been met – and only four of these seven states specify which types of purchases can qualify for the auction process. Just four states incorporate into their laws the flexibility to initiate a process with fewer participants than what the law originally mandates.⁹ Meanwhile, 24 states allow agencies to make consolidated purchases, which can increase efficiency, though only six provide for the creation of a joint committee to coordinate such purchases.¹⁰

Finally, just under a third of states (11) require potential suppliers to apply for government bidder lists as a prerequisite to participate in a selected tendering or direct sourcing process.¹¹

Citizens often have a lot to say about how their tax money is used in public procurement processes. Through understanding the legal framework, they can better identify potential areas for improvement.

How State Laws Fare in Terms of Promoting Transparency and Accountability

Maximum disclosure does not imply violating the confidentiality of contracts, nor displaying data that could later compromise competition in public procurement processes. On the contrary, transparency is essential to promote clear and fair procedures, to prevent the misuse of public resources, and to ensure there are real consequences for those officials and suppliers that violate the law or engage in acts of corruption. While the federal government in Mexico has placed great emphasis on increasing transparency and promoting accountability, the states continue to lag behind on this matter.

⁹ This is important for innovative products (where there might be few companies in the market) or for markets with few participants.

¹⁰ When several agencies acquire the same products (e.g. pencils or water bottles) in one consolidated purchase as opposed to each agency buying them on their own.

¹¹ Contains the names of suppliers of materials and services which are possible sources from whom bids could be solicited.

⁸ "A framework contract is an agreement with suppliers, which establishes the terms governing contracts which are awarded during a given period, in particular price and quantity. Accessing framework contracts can enable authorities to achieve economies of scale and get a better deal than if they were acting alone." From: <http://www.idea.gov.uk/idk/aio/16674334>

Progress has been made in increasing the transparency of some parts of the procurement process and in providing mechanisms to contest final decisions. In 25 states, the final decision on a tender must be made available to all participants, although almost a quarter of these states still do not require authorities to justify rejected proposals. On a positive note, the laws of 29 states provide for procedures and time limits for introducing a complaint, although only seven states allow for arbitration.

As far as obligations for state agencies, the laws of 18 states still do not include a requirement to document the process by which institutional and procurement needs were identified by issuing bodies. The laws of 17 states require government agencies to publish an annual procurement plan, and only 13 states require the publication of modifications to the plan. Without a clear diagnosis, it is hard to determine the effectiveness of government procurement.

Regarding accountability, the states remain behind the federal government. Only the state of Sinaloa requires the involvement of civil society actors, known as “social witnesses,” to monitor procurement processes. That means that the 31 other states in Mexico do not require the evaluation of their procurement processes by civil society actors, even when using public resources. Moreover, only seven states require entities to report the name and title of the officer responsible for assessing proposals, while bidder lists are only made public in four states. The laws of only half the states provide criteria for ending a contract with a provider that violates the terms of a contract, and only 14 states set a period of ineligibility for sanctioned providers. Finally, the laws of 20 states determine a specific amount for fines for breaches of contract, but twelve entities (more than a third) still do not.

Conclusion and Recommendations

The deficiencies and loopholes evidenced by the results described above show the weaknesses and challenges that exist in public pro-

urement frameworks in Mexico. It is urgent to move towards a solid and consistent regulatory framework for acquisitions, leases and public services, as this will naturally determine the way government agencies design and carry out such processes.

To achieve this goal, the first step should be to establish both at the federal and state levels a set of minimum requirements that ensure the laws comply with the four principles for governing procurement processes: (i) maximum value for money, (ii) promotion of competition, (iii) efficient and effective processes, and (iv) transparency and accountability. The ideal is not necessarily that there be a single procurement process for the whole country, but that the 32 laws that govern public procurement in Mexico have one common denominator: the rational and responsible use of public resources.

In 25 states, the final decision on a tender must be made available to all participants, although almost a quarter of these states still do not require authorities to justify rejected proposals

Where to begin? CIDAC and TM have identified eight key points that should be included in any related legislation. While these recommendations do not cover all aspects that have been prioritized in the international arena, they are an excellent starting point to begin the journey towards a modern and efficient public procurement system.

Civil society needs to focus primarily on demanding accountability by government entities in public procurement processes. Obligations for transparency are one way to achieve this, but it is fundamental that citizens understand and defend the principles that are at play when governments use taxpayer money to purchase goods and services.

Demand clear and enforceable budget thresholds: As governments have limited resources, it is essential to obtain maximum value for money. Therefore, if the budget limits are not clearly established by law, public officials have no incentive to spend in a more conscious and rational way. Citizens should watch out for government agencies that exceed the budget threshold set out in their annual plans, to prevent the use of public resources in a careless or corrupt way. If the law allows this threshold to be exceeded, then it is essential that there be clear rules as well as pressure from citizens to require agencies to justify any increase and thereby hold authorities accountable.

Make sure maximum amounts are set by law for direct sourcings and selected tenders: The most effective way to ensure that purchases are made at the best price and quality is to use a bidding mechanism. However, using a bid is not always feasible, and the use of exceptions – like direct sourcings and selected tenders – is at times inevitable. Nevertheless, the aim should be to have bidding processes as the rule and direct sourcings or selected tendering as the exception. To ensure this, the law should specify maximum amounts (in absolute pesos or percentage of bid amounts) above which agencies cannot use the exception mechanism. Otherwise, the bidding process will be constantly avoided without proper justification, with potential negative results in terms of price and quality of the goods or services purchased, and an increased risk of corruption.

Monitor procurement goals and objectives of government agencies: The goals and objectives of an agency should be the basis for the preparation of their annual procurement plan, and as such the quantity and quality of goods purchased must directly relate to what the agency plans to achieve each year. Therefore, the recommendation is to monitor the inclusion of planning goals and objectives of an agency, referencing qualitative and quantitative indicators. Without proper planning, acquired goods or services may be insufficient or excessive.

Compare results of a procurement process with those of a market study: Whether for a bid, a direct source contract or a selected tender, a market study is the only tool that agencies have for understanding how the market works, the price at which goods are commonly offered, and how many firms are able to provide the desired good or service. An agency that does not perform such research runs the risk of buying at less competitive prices and awarding a contract to a company that does not offer high-quality goods and services, thus wasting public money. Yet, surprisingly few agencies are required to perform this essential check. Civil society organizations can increase the incentives for agencies to do a market study by demanding information that compares the result of the study with the results of the purchase.

Check that there are rules to control communication between suppliers during a bidding process, so that competition is ensured: Since tenders are often repeated operations – for example, an agency that needs to buy pencils on an annual basis usually faces the same suppliers each year – the possibility that suppliers could collude to obtain a contract is always a risk. The problem with collusion is that companies no longer have incentives to compete and as such offer higher prices. To minimize the risks of this practice at the expense of public funds, the law must regulate and prohibit communication among bidders. For example, it should mandate that meetings held by government agencies to clarify the terms of the tender are conducted separately with each potential supplier and should establish a penalty for participants who are discovered to have colluded to reach an agreement that would harm competition. It should also ensure that reviewing bodies immediately start an investigation when there is suspicion of collusion. For example, if a bidder withdraws from a process after it has submitted an intention letter and demonstrated it meets all the technical requirements requested, this might be a sign that this firm is in an agreement with other bidders to let this one pass.

Demand widespread usage of electronic procurement systems by government agencies:

An electronic procurement system that contains as much information as possible results in more efficient and transparent processes. The law needs to be clear on this, and civil society organizations are the best advocates for information disclosure. An electronic procurement system should include notices and bidding documentation, preferably for free, as well as supplier lists, and lists of sanctioned providers. In addition, annual procurement plans and amendments must be accessible to all potential participants in the electronic system, with the goal of establishing clear and equitable criteria and reducing the risk of favoritism. Finally, the decision to award a contract, as well as the respective motivation and rationale, should be available to any citizen who wants to see this. With an electronic procurement system, agencies planning to conduct a procurement process have as much information as possible when making a decision, and citizens are able to adequately monitor the use of their taxpayer money.

Request supplier lists: The use of supplier lists is essential to ensure fair participation by all potential bidders and to eliminate transaction costs for agencies, as once a supplier becomes part of the list its capabilities would not need to be assessed again and again. The law should require such lists and specify the technical and economic requirements for registration. It should also be clear who is responsible for assessing each application, as well as the causes that could give rise to suspension or dismissal from the list.

Monitor bidding processes and understand the sanctions for non-compliance:

The law should contain incentives for all participants to act with integrity during the process, for example through the participation of a social witness. Social witnesses act as observers of the process, generate reports and make formal complaints of any anomalies. Their participation helps ensure that processes are as transparent and inclusive as possible. The debar-

ment of vendors that do not comply or perform anti-competitive practices serves as an effective sanction. However, the detecting of companies engaged in anticompetitive practices is often difficult, and for this reason the monitoring by civil society is all the more essential.

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Access to Information as a New Tool to Empower Citizens in the Decision Making Process to Allocate Public Resources: The Case of Mexico

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ABSTRACT

Taking as starting point the absence of an institutional mechanism at the federal level for the direct involvement of taxpayers in the budget distribution in Mexico, this article proposes that transparency and access to information is a powerful tool to empower citizens. First, the mechanisms by which taxpayers have managed to influence budget allocation in other countries are reviewed and the relevance for those mechanisms for the mexican case are assessed. Then, this article analyses the experience of the Federal Institute of Access to Information and Data Protection (IFAI), and argues that there are two mechanisms through which access to information can become a useful tool for citizenship: first, by allowing them to bring to the public discussion issues that otherwise would be unnoticed and secondly, by enabling the creation of a universe of useful information that facilitates the evaluation of expenditure. Finally, three practical conditions to enhance the capacity of access to information as a tool for taxpayers are suggested: i) awareness of the power of the tool, ii) relevance, usefulness and availability of the information, and iii) a civil society that uses the information to advance budgetary issues that are of interest for taxpayers.

In the last fifteen years, important changes have occurred in the Mexican political system: the way to solve political conflict and to allocate public resources has been deeply altered. During decades, the president had the final decision on public resources allocation. Today, there are many actors involved in this decision making process. Local governors, parliamentary groups in Congress, and political parties have gained growing power of decision over public expenditure, while trying to promote their own agendas and interests.

However, the “fragmentation” of the decision making process has not given the opportunity to citizens to take part in the allocation of public resources. Even though, taxpayers provide the resources for public expenditure, they do not have the tools to take part in the decision making process related to it.¹ And who can understand the necessities of taxpayers better than themselves?

Despite the lack of a formal mechanism for citizens to take part in the formulation of the yearly budget, through the access to information law (*Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*)² citi-

zens get the possibility to request information about how the government allocates public resources³. With that information, every taxpayer is able to contrast his priorities with those of public servants.

The main argument of the present analysis is that the access to information law, if fully understood, has the potential to be a mechanism for citizens to influence public expenditure. In consequence, the purpose of this essay is to show how access to information can be a mechanism to empower citizens and to provide them with tools to participate in the allocation of public resources. Regarding this argument, I propose that there are two ways by which access to information becomes a mechanism to the referred ends. First, when a person requests access to public documents, the divulgation of these documents has an indirect effect: public servants may notice errors or problems that were unnoticed before someone – the citizen – asked about them. This can affect the way that resources are allocated. The idea behind this argument is that one single information request can cause a substantive change in the way public entities spend taxpayer’s money by making notorious that something is not working properly.

Second, access to public information allows government and taxpayers to build a public information universe that can be useful to assess public expenditure and, furthermore, to propose changes to the allocation of public resources. The systematization of this information universe would be a powerful tool for the civil society for influencing public expenditure.

In order to develop the main argument of this essay, it is useful to review some mechanisms that have been used by taxpayers in other countries to influence on the allocation of public resources. This can help in understanding whether those mechanisms would be useful for Mexico.

1 To this regard, the Constitution states (Article 31, fraction IV) that it is an obligation of every Mexican “To contribute to the public expenditures of the Federation, and the State and Municipality in which they reside, in the proportional and equitable manner provided by law”. Even though, it is necessary to state that the biggest percentage of federal resources comes from petroleum.

2 The *Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental* was officially published on 11th June 2002, in the *Diario Oficial de la Federación*. Nevertheless, the possibility to request access to information began one year later.

3 The *Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental* states (Article 7) that information regarding the budget and expenditure of public resources is public information by default.

Taxpayers and Public Expenditure: The Traditional Mechanisms

The defining feature of public resources is scarcity. This means that the government has limited⁴ resources to solve unlimited problems. Thus, it is necessary to have priorities and decide which problems need to be solved first. Usually, more resources are allocated to solve the problems that are considered a priority. If there were mechanisms that allowed taxpayers to influence the decision on priorities, they certainly would be interested in doing so.

Public Budgets can easily be understood as a zero-sum game⁵: once “the size of the bag” is determined, each dollar that someone gets is a dollar that someone else loses. An example can help to illustrate the point. If, for example, ten out of a hundred dollars are allocated to “national security”, those ten dollars cannot be allocated to poverty reduction. This is why it is relevant for taxpayers to be informed about how much money – in absolute and relative terms – is allocated to their priorities.

There are different theories about the relationship between public preferences and the determination of public expenditure priorities. For the argument of this article, it is necessary to address three of them: public opinion, interest groups and so called “Pork Barrel” mechanism.

It has been widely argued that the allocation of public resources to a certain extent reflects voters’ preferences⁶. The central argument is that if voters, in a particular moment, show a constant worry about a specific problem, politicians, seeking to increase their political support

The access to information law, if fully understood, has the potential to be a mechanism for citizens to influence public expenditure

in the next election, will allocate resources to reflect the voters’ concern. The key element of this mechanism is that voters must be responsive to politicians’ decisions: “if my deputy does not consider my concerns, I will not vote for him the next time he runs for Congress”. Hence, it is feasible to think that in any community where the main concern of voters is the lack of health services, the public official in charge will allocate a bigger proportion of public resources to public health. After all, he wants to keep and increase political support for his next nomination.

This is an indirect mechanism for citizens in their role as voters to influence public expenditure. It does not consist in a specific effort from taxpayers to influence public expenditure; it is based on the politicians’ interest to gain approval, and, ultimately, votes. Such indirect mechanisms will not be the subject of the present analysis. Rather, this paper will focus on direct mechanisms available to citizens.

Among the actors that engage in direct mechanisms are interest groups. In advanced democracies such groups constantly try to influence budget negotiations⁷ to promote their proper interests. Even though, these groups are not conformed by politicians but by taxpayers, they generally promote the interests of certain business sectors, and not those of regular taxpayers. Therefore, activities of interest groups are not a tool for regular citizens to influence public expenditure.

A more effective direct mechanism for citizens is what political scientists call “Pork

⁴ I assume limited resources, since the budget is relatively fixed. Although it is possible to borrow money from financial institutions, there is a maximum amount, determined by economic and legal considerations.

⁵ The situations in which different players interact in a strategic context in which the additional benefits that one of them receives, necessarily implies a benefit expense of another, are known as “zero-sum games.” A classic example is that of a bet, in which the winner receives the stake, and the loser, lost exactly the same amount.

⁶ As an example, see: Soroka, Stuart y Christopher Wlezien, Opinion-Policy Dynamic: Public Preferences and Public Expenditure in the United Kingdom, in: *British Journal of Political Science* (2005), 35: p. 665-689.

⁷ The “alcoholic beverage industry” in the United States, that makes pressure for a reduction in the budget of the campaign against the consumption of alcohol, would be such an example.

Barrel"⁸. It consists in particularistic expenditure, this is, the dispersion of the cost of allocating benefits to a particular group or region. An example will be useful to understand this mechanism. Let's imagine that a congressman from Florida aims to increase the public budget to subsidize orange producers in his state, knowing that this could help him to attract more voters in the next election. Another case would be a congresswoman who wants to allocate resources to build a bridge to communicate the two main towns in her district. If both of those projects are approved, they are considered "Pork Barrel".

This kind of expenditure can be considered inefficient in an economic sense, because it offers particular benefits at the expense of resources that could be allocated to public goods that benefit a bigger number of taxpayers. However, "Pork Barrel" is one of the most effective mechanisms that citizens can use to influence the allocation of public funds. The key element to make "Pork Barrel" effective is the possibility to reelect officials. That is how congressmen become responsive to their districts' interests.

In the Mexican case, the re-election of legislators is forbidden by the Constitution. In countries where reelection is permitted, an inadequate decision by a congressman can cause his supporters to detract their support, which can eventually lead to lost elections. In the United States, "Pork Barrel" is an effective mechanism because congressmen are not "aligned" with their parties, but with their electors' preferences⁹. In Mexico, however, institutional mechanisms that allow voters to reward or punish their congressman for their behavior do not exist.¹⁰ Thus, "Pork

8 See: Kenneth A. Shepsle and Barry R. Weingast, Political Preferences for the Pork Barrel: A Generalization, *American Journal of Political Science* Vol. 25, No. 1 (1981), pp. 96-111.

9 A representative is considered to be disciplined with his party, when he or she always votes in "block" with the other members of his party, regardless of what the preference of voters who took him to Congress might be. This does not mean that the representatives do not vote in "block" sometimes. A representative will vote in "block" with its party when doing so is not against the preferences of the electorate in his district.

10 In this regard, it has been noted that "[...] an argument for immediate reelection of the legislators is that it allows to link accountability to citizens by giving them the ability to reward or punish the irrepresentatives. If policymakers are to have a common interest with the public, they must rely on them [to stay in office]". Human Development Report for Mexico, 2011. UNDP, p.180.

Barrel" cannot be a functional tool in the Mexican case to generate a mechanism for taxpayers to influence public resource allocation

Given that the described traditional mechanisms cannot be an effective mechanism for Mexican taxpayers, access to information constitutes a new opportunity to influence public expenditure.

Access to Information: A Tool to Influence Public Expenditure

In 2002, when the *Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental* was ratified in Mexico, a series of transformations took place within the public administration¹¹. Especially, public information has increasingly been conceived as the property of citizens, rather than as a prerogative of politicians. Civil servants in Mexico are conscious of being observed constantly. However, apart from that, access to information has opened possibilities that are worth to be explored.

Among the controversies that the IFAI (Federal Institute for Access to Information and Data Protection) has resolved, there are many cases related to public resource allocation. The IFAI has the mandate to resolve controversies related to access to public information. When a person requests information to a federal entity or department, and the information is denied, the citizen has the right to ask the IFAI to review the decision. Each case is assigned to a Commissioner who studies the case and presents a project to the other Commissioners, which can a) reject the appeal because it is contrary to law or supersedes it; b) confirm the decision of the department or entity to which the request was made; or c) revoke or modify the decision and require the department or entity to allow the interested party to access the requested information. Then, all Commissioners vote and decide if the information is made public or if

11 A collateral effect is what I have called a "silent administrative reform", promoted by the *la Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*. See: Trinidad Zaldivar, Ángel, *La transparencia y el acceso a la información como política pública y su impacto en la sociedad y el gobierno*, Miguel Ángel Porrúa, 2006.

it shall remain confidential or privileged for a certain period of time.

In 2002, when the Congress was discussing the 2003 budget, different civil society organizations¹² analyzed what seemed to be irregularities in the allocation of public resources. To identify the origin of those irregularities, CSO's used the access to information law. By requesting several documents, those organizations were able to prove that a congressman assigned resources for the *Comité Pro-Vida*, that were misspent at the expense of a program to prevent AIDS. The information was published and an investigation followed. This is an example of how, when civil society uses the access to information law, transparency can be a useful tool to supervise the allocation and use of public resources.

Furthermore, an individual information request can be –under certain circumstances– a tool to place a relevant issue for taxpayers on the national agenda. Consequently, an individual information request can cause politicians and the media to notice issues that formerly were of no relevance. Hence, access to information becomes a mechanism by which citizens can call attention on the topics, which are relevant for them, and, after doing so, can influence the allocation of public resources.

The reason for this mechanism to work is that one single request produces information available to any person. That includes making information available to public servants. At the IFAI, in several cases we have found that sometimes the public servants do not have sufficient information to take a decision. Thanks to an information request, government officials become aware of a problem and of alternatives that went unnoticed before. In this regard, the IFAI has promoted the diffusion of relevant cases to raise awareness about them and provide the public with relevant information to influence the allocation of public resources.

Moreover, and as indicated before, the right of access to information also helps to build a universe of publicly available information.¹³ Consequently, access to information can become a useful mechanism for citizens by promoting this kind of diffusion of public information. The reason behind this is that taxpayers are now able to generate their own statistics to assess the expenditure of public resources.

In Mexico, public information has increasingly been conceived as the property of citizens, rather than as a prerogative of politicians

Availability of information is crucial to empower citizens, to help them influence the allocation of public resources. The UNDP has stated that “in the exercise of their right to assess, discuss and decide over allocation of public resources, citizens help [the government] to define those necessities that are a priority, to understand them in a better way, and to act in consequence [...]”¹⁴. Civil society assesses public policy from a point of view that government officials usually don't consider. In its assessment, the civil society often uses innovative methodologies.

Thus, by 1) allowing taxpayers to call attention on the topics, which are relevant for them, and 2) making information available to every taxpayer through diffusion of the requested data, the right of access to information has the potential to increase its capacity as a tool for citizen participation in determining priorities in public spending. For this to apply, certain conditions need to be given. From the experience of the IFAI, the following conditions would need to be underlined:

12 Equidad de Género: Ciudadanía, Trabajo y Familia, A.C., (Equidad A.C.) and other CSOs like Grupo de Información en Reproducción Elegida (GIRE), Consorcio para el Diálogo Parlamentario y la Equidad (Consortio), Salud Integral para la Mujer (SIPAM), Letra S and Fundar Centro de Análisis e Investigación A. C. worked together to discover where the money ended.

13 This happens because the law provides that information obtained through a request for information is public for anyone, and this information is available on the Internet in many cases.

14 Human Development Report for Mexico, 2011, UNDP, p.37.

1. The presence of citizens aware of the power of the tool at their disposal. As noted, one single information request can have a major impact. However, for this to happen, people must exercise their right with awareness of its implications. The challenge of socializing the right of access to public information continues in Mexico, and in light of the exposed above, its significance becomes greater.
2. The information provided by the government needs to be relevant and useful, not only to the applicant, but to any citizen. Poorly structured or non-manageable databases are of little value for the users. Information can only become a genuine instrument for the public if it has certain relevance for the public. In this regard, David Eaves –an open government activist from Canada– emphasized during the VIII National Week of Transparency¹⁵, that there are three requirements for data to be considered “open”: i) The data can only be considered existent, if it is possible to index the data and to easily search within the data; ii) The data is only useful, if it comes in electronic format, and iii) the legal framework has to allow the reuse of the data, as only the access to data does not empower the citizen. The presence of these conditions (possibility of indexing and search, electronic format, and reuse) is what we mean by relevant and useful data¹⁶.
3. A civil society that translates the information obtained through the law into a push for taxpayers' interests. If these three conditions were given, the right of the access to information would enhance its capacity as a mechanism that empowers citizens giving individuals tools to influence the distribution of public resources. As a consequence, the challenge of transparency in Mexico—especially for the IFAI—is to strengthen the above-mentioned conditions.

¹⁵ The VIII National Week of Transparency took place during the first week of September, 2011.

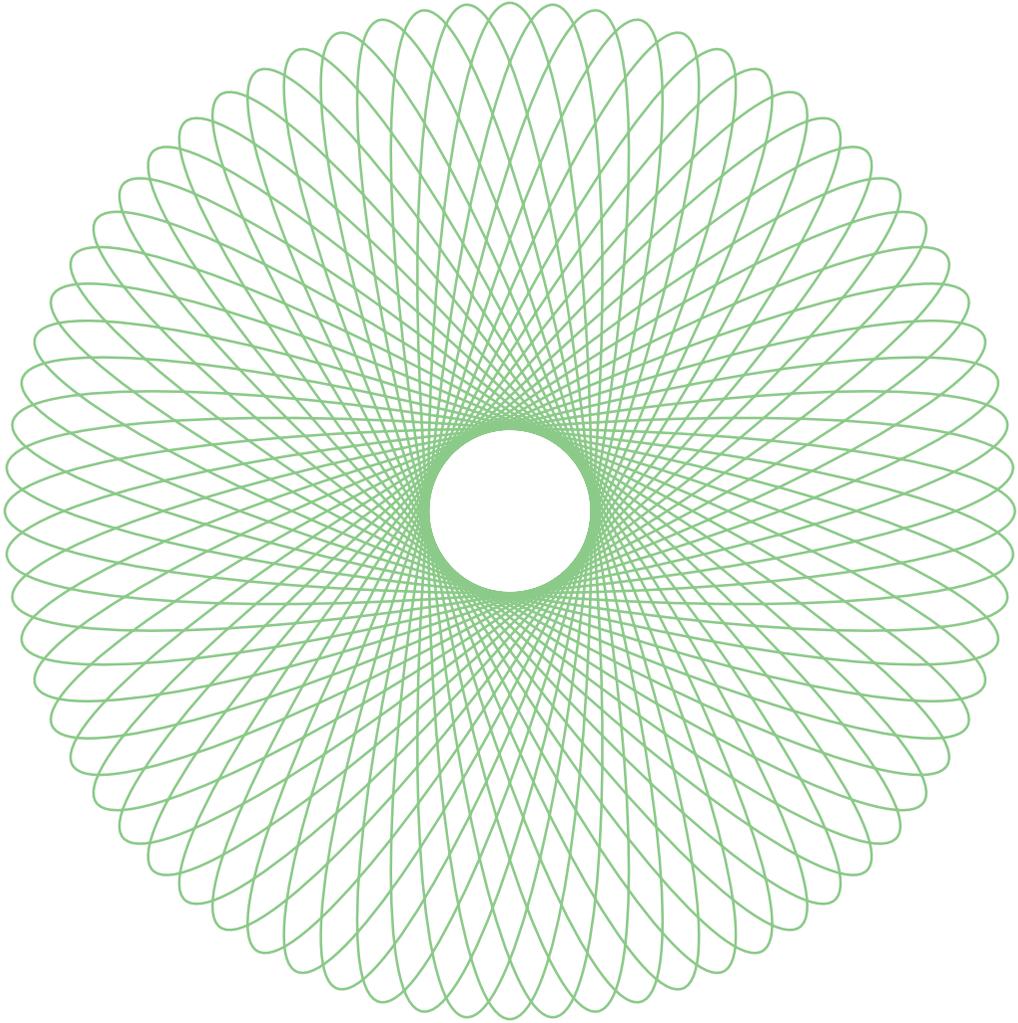
¹⁶ Information available at: <http://snt.ifai.org.mx/downloads/PANEL6VERSION.pdf>

In this vein, once the right of access to information reaches its full potential as a tool to empower citizens, the next step for taxpayers will be the direct influence over the decision of what is a priority in public expenditure. Taxpayers have the right to know the fate of every dollar that the government spends. The challenge for the future is to find ways to provide citizens with institutional mechanisms to influence the distribution and allocation of public resources, in accordance with their concerns and interests.

In the absence of such mechanisms, which would be the entry door for individuals to participate in the allocation of public resources, transparency and access to public information opens a window of opportunity for citizens and civil society to place their priorities on the public agenda. The possibilities mentioned here deserve attention in order to strengthen the right of access to information and its usefulness and relevance as a public tool.

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BIOGRAPHIES OF THE AUTHORS

EDUARDO BOHÓRQUEZ

INSTITUTION: Transparencia Mexicana

ROLE: Director of Transparencia Mexicana

EDUCATION: Eduardo Bohórquez holds a Degree in Political Science and Public Administration from the Autonomous University of Mexico (UNAM), and a Master's Degree in Development Studies, University of Cambridge, United Kingdom.

EXPERTISE: Transparency and accountability in the public and private sectors, good governance, corruption in public service delivery, foreign bribery, management of resources, information systems, measurement of corruption and good governance.

EXPERIENCE: Eduardo has been Director of Transparencia Mexicana since 1999. He is also Executive Director of Fundación Este País since 2001. He has been responsible for the design of a large number of IT strategies that included information systems moving forward the agenda on anti-corruption, the accountability of social programs and civil society oversight mechanisms. Eduardo has been consultant for many international organizations and CSOs. He has been a facilitator and instructor in workshops and courses of the Center for Economic Research and Teaching (CIDE), the Monterrey Institute of Technology and Higher Education and the University Iberoamericana, among other academic institutions. He cooperates with the World Bank, advising on transparency and accountability of provision of public services and management of resources like water.

MARIA EMMA CANTERA

INSTITUTION: Organisation for Economic Co-operation and Development (OECD)

ROLE: Consultant

EDUCATION: Maria Emma Cantera is an economist and holds a Master's degree in International Relations.

EXPERTISE: Public sector integrity, including issues of conflict of interest, transparency and public procurement.

EXPERIENCE: Maria Emma Cantera has worked on the Procurement Review of the United States Federal Government as well as on the Directorate's publication "Government at a Glance", where she participated in data collection and analysis of survey results regarding conflicts of interest, ministerial advisors and public procurement. Recently, she was part of the coordination group of the OECD Public Procurement Reviews of Mexico's Federal Electricity Commission, Social Security Institute and Pemex. In addition, she was responsible among others for the chapters on transparency through access to information and achieving complementary goals through procurement.

MARIA CRISTINA CAPELO

INSTITUTION: Center of Research for Development (CIDAC)

ROLE: Policy analyst, responsible for coordinating CIDAC's economic regulation projects (at the time of writing)

EDUCATION: Maria Cristina Capelo studied Political Science at Washington University in St. Louis and holds a Master of Public Policy from Duke University.

EXPERTISE: Competition and economic regulation.

EXPERIENCE: While at CIDAC, she edited over a dozen books and policy documents on the energy, telecommunications, financial, and transportation sectors, in her role as Coordinator of the Mexican Network for Competition and Regulation Issues. While at CIDAC, she promoted the realization of educational videos and university essay contests to strengthen the culture of competition in Mexico. The videos, "Why Competition Matters," "The Rules of the Game," and "¿Collusion or Competition?" have gathered over 36,000 visits on CIDAC's YouTube Channel. Prior to joining CIDAC, Maria Cristina participated in research projects related to foreign trade, productivity, SMEs. She also worked with the United Nations Commission for Trade and Development (UNCTAD) where she analyzed the legal frameworks to promote foreign investment in Colombia and Brazil and contributed to generating policy recommendations for both countries.

DEBORAH CUMMINS

ROLE: Independent consultant and trainer on local governance issues in Timor-Leste, Associate at the Peace and Conflict Studies Institute of Australia (PaCSIA)

EDUCATION: Deborah Cummins holds a PhD in Politics and International Studies from the University of New South Wales, and a Law Degree from the University of Melbourne.

EXPERTISE: Local-level governance, decentralization, democratization, community development, women's leadership, and women's access to justice in Timor-Leste.

EXPERIENCE: Deborah works as a consultant for the University of Queensland, the Centre for Democratic Institutions, the National University of Timor-Leste, and The Asia Foundation. She has also been a lecturer in Development Studies

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EXPERTISE: Citizen's access to public accounts, public resources and audit.

EXPERIENCE: In her current position, she has expanded the citizens' access to public accounts and to means of submitting complaints about the misuse of public resources. She has worked as an auditor for TCE-Ba. She pioneered the implementation of the Ombudsman's Office at TCE-Ba.

DENIZ DEVRIM

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EXPERTISE: Good governance and anti-corruption, corruption in public service delivery, democratization processes in the Western Balkans, European Neighbourhood and enlargement policies, and Turkish foreign policy.

EXPERIENCE: Deniz is Program Coordinator at Transparencia Mexicana. She coordinates and conducts research related to the initiative on Citizens and Markets as well as on other topics related to good governance and anti-corruption. Formerly, she worked as research fellow at the Barcelona Center for International Affairs where she focused on good governance in the Western Balkans and Turkey. She also worked as a Policy Advisor in the European Parliament

on EU external relations and international trade, with a focus on EU enlargement, especially EU-Turkey relations as well as European Neighbourhood Policy. Her published articles cover the topics of democracy in the EU-Neighbourhood, corruption in public service delivery, EU neighbourhood and enlargement policies, Turkish Foreign Policy and transformation processes in the Western Balkans and Turkey.

ALEXANDRE GUSMÃO

INSTITUTION: Comissão Anti-Corrupção (Anti-Corruption Commission of Timor-Leste)

ROLE: Executive Secretary of the Anti-Corruption Commission of Timor-Leste

EDUCATION: Alexandre Gusmão studied Philosophy and Sociology at Driyarkara School of Philosophy in Jakarta, Indonesia. He completed his Bachelor's degree in International Community Development at Victoria University in Melbourne, Australia. He is now undertaking a Master of Management at Gajayana University, Malang Indonesia.

EXPERTISE: Peace building, education, cultural preservation and community development.

EXPERIENCE: During the country's occupation by Indonesia, Alexandre Gusmão was actively involved in establishing a number of organizations to support the struggle of the independence of Timor-Leste. This included Timor Aid, one of the biggest national NGOs that was involved heavily in the reconstruction of Timor-Leste following the withdrawal of the Indonesian military in 1999. He later served as Deputy CEO and CEO of Timor-Aid, leading more than hundred staff members who were running projects in the areas of civic education, cultural preservation and community development, before taking position as the Executive Secretary of the Anti Corruption Commission of Timor-Leste in June 2010. He is also lecturer at National University Timor-Lorosa'e and has been actively involved in a number of research projects with various Australian universities from 2002-2010, on issues such as surrounding peace building, community development, identity and language.

DURREL NZENE HALLESON

INSTITUTION: Transparency International Cameroon

ROLE: Legal adviser and natural resources governance expert at Transparency International Cameroon

EDUCATION: Durrel Nzene Halleson holds a degree in Law from the University of Buea, Cameroon and an LL.M (Master's degree in Law) in International Trade and Investment Law from the University of Pretoria. He has been a Human Rights fellow at the Institute for the Study of Human Rights (ISHR) at Columbia University, New York.

EXPERTISE: Governance in natural resources, trade and development, human rights and regional integration dynamics in Africa.

EXPERIENCE: Durrel Nzene Halleson has previously worked as both a researcher and legal officer at the Centre for Environment and Development in Cameroon and as Research Intern with the Development and Trade Program at the South African Institute of International Affairs (SAIIA) in Johannesburg. He has published on a wide range of issues related to his expertise.

MATEJ KURIAN

INSTITUTION: Transparency International Slovakia

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EDUCATION: Matej Kurian holds a Master's degree in Political Science from Central European University in Budapest.

EXPERTISE: Open government data, local government and web technologies in governance and accountability, political theory, non-democratic regimes and election observation.

EXPERIENCE: Matej joined Transparency International Slovakia in September 2010 as a program coordinator. Before he worked on several data-driven online projects including visualization of public grants in sports and culture, ownership of the Slovak media as well as on the site "Open Contracts" ([131](http://www.ot-</p>
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vorenezmluvy.sk) allowing public to evaluate and comment on state contracts. Previously worked for a management consultancy, called A.T. Kearney.

HUGUETTE LABELLE

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ROLE: Huguette Labelle is currently Chair of the Board of Transparency International, member of the Board of the UN Global Compact, member of the Group of External Advisors on the World Bank Governance and Anti-corruption Strategy, member of the Advisory Group to the Asian Development Bank on Climate Change and Sustainable Development, member of the Executive Board of the Africa Capacity Building Foundation, member of the Board of the Global Centre for Pluralism and Vice Chair of the Senior Advisory Board of the International Anti-Corruption Academy. She also serves on additional national and international boards. She provides advisory services to national and international organizations.

EDUCATION: She holds a Doctor of Philosophy, Education. She is a Companion of the Order of Canada. She has been awarded honorary degrees from twelve Canadian Universities and the University of Notre Dame USA and has received several additional honors.

EXPERTISE: Anti-corruption strategies, good governance, development, climate change.

EXPERIENCE: She has served for a period of nineteen years as Deputy Minister of different Canadian Government departments including Secretary of State, Transport Canada, the Public Service Commission and the Canadian International Development Agency. She has served on several boards.

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INSTITUTION: Federal Competition Commission of Mexico

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EDUCATION: Rodrigo Morales Elcoro holds a Bachelor of Economics from Instituto Tecnológico de Monterrey (ITESM) and a Master of Economics from Duke University, as well as a PhD in Economics (candidate) from the University of Texas, Austin.

EXPERTISE: Competition policy, public policies.

EXPERIENCE: Rodrigo Morales Elcoro is Commissioner at the Federal Competition Commission since 2005. He has worked at the Public Policies Office, the Office of the President, and at the Faculty of Economics at the Universidad Autónoma de Nuevo León.

EDWARD ODHIAMBO OKELLO

INSTITUTION: Ethics and Anti-Corruption Commission in Kenya; Advocate of the High Court of Kenya

ROLE: Legal Officer at the Ethics and Anti-Corruption Commission in Kenya

EDUCATION: Edward Okello holds a Master of Law from the University of Pretoria, South Africa and a Bachelor of Law from the University of Nairobi, Kenya. He has also had training in policy formulation and legislative drafting.

EXPERTISE: Public procurement governance, anti-corruption and human rights issues.

EXPERIENCE: Prior to his current position, Edward Okello worked with the Kenya National Commission on Human Rights as a Programme Assistant. He has been involved in research on governance, anti-corruption and human rights issues, and was appointed "Governmental Expert" on the United Nations Convention Against Corruption by the Government of Kenya and the United Nations Office on Drugs and Crime in 2010. He was involved in the development of a simplified version of the Public Procurement and Disposal Act of Kenya, training of public officers on procurement law in Kenya in addition to training civil society actors on demand driven accountability mechanisms in the implementation of public projects.

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ROLE: Founder and President of the Board of Transparencia Mexicana

EXPERIENCE: Federico Reyes Heróles is a renowned Mexican writer and political commentator; he has participated in many television and radio broadcasts, including the program *Entre Tres*. He is a regular collaborator of several Mexican newspapers like *Reforma*, *El Norte* and *Mural*, to mention just a few. Among his most recent and recognized publications are *Memorial del mañana*, *Conocer y decidir*, *Entre las bestias y los dioses* and *Alterados*. He is also a writer of novels, *El Abismo* and *Canon*, among others. Throughout his professional career, he has been a member of the Advisory Council of the Human Rights National Commission (Consejo Consultivo de la Comisión Nacional de los Derechos Humanos, México), a founding member of the National Commission of Medical Arbitration (Comisión Nacional de Arbitraje Médico, México), and a member and president of the University Patronage of the National Autonomous University of Mexico (Patronato Universitario de la Universidad Nacional Autónoma de México). He is the founder of the Mexican magazine *Este País* and he is the President of *Fundación Este País*. He is also one of the five members who founded the *Citizen Institute of Studies about Insecurity* (Instituto Ciudadano de Estudios Sobre la Inseguridad, A.C., México). He has been the President of the Board of Transparencia Mexicana since its foundation. This is one of the many philanthropic activities in which Mr. Reyes Heróles collaborates.

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INSTITUTION: Center of Research for Development (CIDAC)

ROLE: Research Fellow

EDUCATION: Marien Rivera studied law at CIDE (Centro de Investigación y Docencia Económicas) in Mexico.

EXPERTISE: Security and justice, public finance and transparency.

EXPERIENCE: She has elaborated numerous legal analyses on the subjects of security and justice, public finance and transparency and has developed indicators to measure the quality of the legal framework governing public expenditure in Mexico at the sub-national level.

SHRUTI SHAH

INSTITUTION: Transparency International USA

ROLE: Senior Policy Director of Transparency International-USA

EDUCATION: Shruti Shah is a Chartered Accountant (India) and a Certified Fraud Examiner. She has lived and worked in India and the UK and is fluent in Hindi and Gujarati.

EXPERTISE: Corruption, anti-corruption laws, transparency, procurement, web-based monitoring of procurement.

EXPERIENCE: In her current position Shruti is responsible for the promotion of TI-USA's anti-corruption law and regulation policy agenda. She also develops and implements advocacy campaigns and builds strategic partnerships with international organizations, senior government officials and private sector and NGO representatives to ensure that laws against bribery and corrupt practices, and favoring transparency, are implemented and effectively enforced. She also works with companies and industry associations to compile best practices related to compliance with anti-corruption laws. Additionally, she coordinates research on pending legislation related to industry transparency requirements and facilitates dialogue between the private sector and legislators. Shruti is managing a project to develop a web-based tool to enable civil society organizations monitoring procurement to recognize the red flags of corruption. Formerly, Shruti worked at PricewaterhouseCoopers and KPMG. She assisted clients and Outside Counsel with complex financial and accounting matters related to fraud, anti-corruption/FCPA compliance, and accounting irregularities. She has managed investigations of alleged accounting

fraud in publicly held companies. She assisted companies in designing anti-corruption/FCPA compliance programs, and was involved in developing PwC's fraud methodology and procedures for client audits.

JAMES SHEPPARD

INSTITUTION: Organisation for Economic Co-operation and Development (OECD)

ROLE: Policy Analyst

EDUCATION: James Sheppard holds Master's degrees in Public Administration and Public Policy from the London School of Economics and Political Science and National University of Singapore and Bachelor's degrees in Economics and Asian Studies from the University of Western Australia.

EXPERTISE: Public sector governance, including issues of regulatory management and administrative simplification, budgeting and procurement, risk management and internal control, integrity and corruption prevention.

EXPERIENCE: On procurement, Mr. Sheppard focuses on the design and evaluation of procurement management systems, the use of procurement as a policy tool to support innovation and social policies as well as transparency, supplier and citizen engagement. Recently he has worked on public procurement in the Brazil, Mexico, Israel, Latvia, the Russian Federation and the United States. Prior to joining the OECD, James Sheppard worked as a public financial management specialist at the World Bank in Indonesia on budgeting, procurement and treasury management reform as well as post-disaster reconstruction. He has also been a consultant for the International Budget Partnership and Revenue Watch Institute on issues of budget and extractive industries transparency.

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INSTITUTION: Transparency International USA

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EXPERTISE: Transparency and anti-corruption in bilateral and multilateral aid, public procurement.

EXPERIENCE: Before joining TI-USA, Francesco De Simone worked on corruption prevention programs and training activities at the Inter-American Development Bank's (IDB) Office of Institutional Integrity, the office in charge of investigating and preventing fraud and corruption in activities financed by the IDB. At the IDB, Mr. De Simone also worked at the External Relations Office, where he contributed to a project on water resources in Latin America. He has lived and worked in Italy, Brazil and the United States and speaks English, French, Italian, Portuguese and Spanish.

BRUNO WILHELM SPECK

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EDUCATION: Bruno Speck holds a Bachelor's Degree and PhD in Political Science from the Albert-Ludwigs-Universität Freiburg. He was a post-doctoral fellow at the Max Planck Institute for Comparative Penal Law in Freiburg (2000) and at the Free University of Berlin on the topic of Superior Institutions of External Control (2002).

EXPERTISE: Political parties, party funding, elections, institutions of control, participation and control by the civil society, as well as corruption and good governance.

EXPERIENCE: Since 1995, Bruno Speck has conducted research and published books and articles on good governance and corruption, moving from an academic perspective to political strategies for cooperation and reform on a national and international level. Among his main research areas is party and campaign

finance as well as government audit institutions. Before engaging as a senior advisor to Transparency International he has been the Director of Research for Transparência Brasil.

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ROLE: Commissioner at IFAI

EDUCATION: Attorney at Law specialized in Public Finance from the National Autonomous University of Mexico (UNAM). Master of Government and Public Administration from the Benemérita Universidad Autónoma de Puebla, Mexico.

EXPERTISE: Transparency, accountability and rights of access to information and data protection.

EXPERIENCE: Angel Trinidad Zaldívar has worked within the Mexican public administration for more than 30 years. He was Executive Secretary at the Federal Institute for Access to Information and Data Protection (IFAI) and Technical Secretary at the Mexican Conference of Access to Public Information (COMAIP). He also worked as Coordinator of Inter Institutional Liaison at the Mexican President's Office; he was a Top Aide of the Minister of Tourism; he collaborated as the Ministry's Delegate of Communications and Transportations for the States of Puebla and Morelos and as Advisor and Liaison Coordinator on behalf of the Deputy Minister with all the state representatives of the Ministry of Communications and Transportations; he was advisor of the Social Development Office of the Mexico City's Governor; he collaborated as Private Aide of the Presidential Candidate Mr. Luis Donaldo Colosio; he worked as Advisor of the Head of the Social Development Unit of PEMEX Gas and Basic Petrochemicals; he was Director of Administration for the Program of Social Milk Supply (LICONSA) and Technical Secretary of the Educational Planning Deputy Minister of the Ministry of Education, among others public charges. He has been lecturer of the course on General Theory

of the State at the Intercontinental University, Mexico City, and has published the books "Decentralization, a pending subject"; "Breviary for Reflection", "Transparency and Access to Information as a public policy and its impact on society and government". He was a columnist of the Milenio-Puebla newspaper.

EDITORIAL TEAM

Concept

**EDUARDO BOHÓRQUEZ
AND DENIZ DEVRIM**

Layout and design

MARCELA RIVAS

INSTITUTION: Independent professional

ROLE: Graphic Designer

EDUCATION: Marcela Rivas is a Graphic Designer specialized in Editorial Design and Typography. She studied at the Universidad Intercontinental, in Mexico City, where she also obtained a graduate degree (specialization) on Typography.

EXPERTISE: During nearly 20 years of professional experience, she has collaborated with Civil Society Organisations, such as the Academia Mexicana de Derechos Humanos, Fundación Este País and Transparencia Mexicana, where she has also been able to expand her professional expertise undertaking work on web design.

EXPERIENCE: Marcela was part of the Soft News graphic design team in the prestigious mexican newspaper Reforma and was also a founder member of the weekly news magazine Cambio. She has been the Editor of Arts and Graphic Design of La Revista, a magazine published weekly by the mexican newspaper El Universal, and has had the same responsibilities in the magazine Emeequis. Her work has been awarded in several occasions by the Society of News Design and the Society of Publication Design. She currently advises and works as an independent professional with CSOs and private firms.

Typography

ÓSCAR YÁÑEZ

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ROLE: Editorial and Type Designer

EDUCATION: Óscar studied Graphic Design at Universidad Autónoma Metropolitana in

Mexico City. He obtained the first class honors studying a Master in Typography at Centro de Estudios Gestalt in Veracruz, Mexico. Graduate degree on Typography.

EXPERTISE: With almost 20 years of professional work, Óscar has been related with design and redesign of magazines, newspapers, websites and mobiles with a strong emphasis in typography.

EXPERIENCE: Óscar was part of the team of *Reforma* newspaper, he worked for Televisa as Interface Coordinator and as Design Director being in charge of twenty five publications, he worked for *El Universal* newspaper and Grupo Expansión where he was responsible of the design teams of magazine publications and websites. On web experience, Óscar was the leader of the design teams for the launch of several websites as *reforma.com*, *cnnextension.com*, among others. Recently he worked on mobile design with the launch of the iPad edition for *Expansión* magazine. On typography, he has created nineteen Type Faces, used in magazines as *Elle*, *Dinero Inteligente*, *Expansión*, *Manufactura*, *Cronos* and others. His work has been awarded several times by the Society of News Design and the Society of Publication Design and the Cámara Nacional de la Industria Editorial Mexicana; his type designs was elected in *Tipos Latinos* to show the best work in Latin America; elected to appear in the book '200 Mexican Designers' showing the best design work of his country, published by Designio, Tecnológico de Monterrey and Asociación Diseña México. Today, Óscar is in the Middle East, learning new alphabets and working as Design Director for Galadari Group in Dubai, UAE.

Coordination

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EDUCATION: Anne holds a Bachelor's degree in History and Literature from the University of la Nouvelle Sorbonne of Paris and a Master's degree in Development Studies from the Gradu-

ate Institute of International and Development Studies of Geneva.

EXPERTISE: Program monitoring and evaluation in the development and human rights sectors; focus on global health, public and corporate accountability and the protection of civil and political rights.

EXPERIENCE: Anne started working for the GAVI Alliance in 2009 performing French media monitoring for the External Relations Office and monitoring health and immunization programs for the Latin American and EURO regions in the Program Support department. She joined Transparencia Mexicana in June 2011 conducting research to implement the Central Monitoring System of the Anticorruption Conventions Program and recently carried out communication activities for the protection of human rights at the World Organization Against Torture.

Editing

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EDUCATION: Kelly holds a Bachelor's degree from the State University of New York at Geneseo in International Relations and a Master's degree (LL.M) in Public International Law (Human Rights) from the National University of Ireland, Galway. Her thesis focused on the question of corruption as a crime against humanity.

EXPERTISE: Transparency, human rights, anti-corruption, international anti-corruption conventions.

EXPERIENCE: Kelly began her work with Transparency International by doing research for TI Ireland in 2008 and later moved to the TI Secretariat in February 2009 to work on the International Anti-Corruption Conventions Program. She has also worked as a consultant for the TI Secretariat in support of their work surrounding the OECD Convention, in particular as editor and co-author of the *2011 Annual Progress Report* on Enforcement of the OECD Anti-Bribery Convention, as well as for TI Mexico on international conventions and TI Ireland on the production of an anti-corruption online wiki platform.

Proof-reading

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EXPERTISE: International Relations, Citizens and Markets, Access to Information.

EXPERIENCE: Regina collaborated in research projects on the quality and quantity of information requested and obtained on different subjects (security, health, social aid) from federal ministries in Mexico with a researcher at ITESO. She is currently an intern at Transparencia Mexicana and Fundación Este País. At Fundación este País, she has collaborated in the elaboration and verification of the *Estrategia nacional de capacidad institucional para fortalecer la cohesión comunitaria en el ámbito local 2012* (ECCA) database, which is part of a national initiative seeking to strengthening the institutionality of local governments in Mexico. At Transparencia Mexicana, Regina is participating in the initiative Citizens and Markets.

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EXPERTISE: International relations, transparency and anti-corruption.

EXPERIENCE: Currently, Radka is participating at a Master university exchange in international relations and administration at the Instituto Tecnológico Autónomo de México, ITAM. During her traineeship at Transparencia Mexicana she has participated at the IPRO project, which aims to promote institutional strengthening of social programs in Mexico, and has helped in the verification of data of an indicators system on the monitoring of anti-corruption conventions, she has also worked for the Citizens and Markets Initiative.



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