

MODELLING REFORM STRATEGIES FOR OPEN CONTRACTING IN LOW AND MIDDLE INCOME COUNTRIES



Research Report

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CONTENTS

Executive summary	4
Introduction	10
Theoretical framework	12
Methodology	14
Data collection methods	14
Method of analysis	15
Identifying strategies that work	15
Country selection	16
Country findings	17
Bangladesh	17
Overall assessment	17
Country governance context	17
PP Profile	17
The reform trajectory	18
<i>Legal framework</i>	19
<i>Data mapping</i>	19
Actors	20
Impact mechanisms	22
<i>Political will</i>	22
<i>Capacity</i>	22
Indonesia	24
Overall assessment	24
Country governance context	24
PP profile	25
The reform trajectory	25
<i>Legal framework</i>	25
<i>Data mapping</i>	26

Actors	27
Impact mechanisms	28
<i>Political will</i>	28
<i>Capacity</i>	29
Kenya	31
Overall assessment	31
Country governance context	31
PP profile	31
The reform trajectory	32
<i>Legal framework</i>	32
<i>Data mapping</i>	32
Actors	33
Impact mechanisms	34
<i>Political will</i>	34
<i>Capacity</i>	35
Nepal	36
Overall assessment	36
Country governance context	36
PP Profile	36
Reform trajectory	37
<i>Legal framework</i>	37
<i>Data mapping</i>	37
Actors	38
Impact mechanisms	39
<i>Political will</i>	39
<i>Capacity</i>	40
Nigeria	41
Overall assessment	41
Country governance context	41
PP profile	41

Reform trajectory	41
<i>Legal framework</i>	42
<i>Data mapping</i>	42
Actors	43
Impact mechanisms	44
<i>Political will</i>	44
<i>Capacity</i>	44

South Africa 45

Overall assessment	45
Country governance context	45
PP profile	45
The reform trajectory	46
<i>Legal framework</i>	46
<i>Data mapping</i>	47
Actors	47
Impact mechanisms	48
<i>Political will</i>	48
<i>Capacity</i>	48

Tanzania 50

Overall assessment	50
Country governance context	50
PP profile	51
The reform trajectory	51
<i>Legal framework</i>	51
<i>Data mapping</i>	52
Actors	53
Impact mechanisms	54
<i>Political will</i>	54
<i>Capacity</i>	54

Uganda 56

Overall assessment	56
<i>Reform strategies used</i>	56
Country governance context	56
PP profile	56
The reform trajectory	57
<i>Legal framework</i>	57
<i>Data mapping</i>	58
Actors	58
Impact mechanisms	59
<i>Political will</i>	59
<i>Capacity</i>	60
Zambia	61
Overall assessment	61
Country governance context	61
PP profile	61
Reform trajectory	61
<i>Legal framework</i>	62
<i>Data mapping</i>	62
Actors	62
Impact mechanisms	63
<i>Political will</i>	63
<i>Capacity</i>	64
Key findings and recommendations from comparative analysis	65
Political will vs capacity	65
<i>Political will</i>	65
<i>Capacity</i>	66
<i>Recommendation</i>	67
Drivers of reform	67
<i>Societal drivers</i>	67
<i>Internal governmental drivers</i>	68

<i>External drivers</i>	68
Reform strategies	69
The Accountability Route: Transparency at the heart.	69
<i>Drivers</i>	70
<i>Challenges</i>	70
<i>Recommendations</i>	70
The Efficiency route: Transparency as a byproduct	71
<i>Drivers</i>	71
<i>Challenges</i>	71
<i>Recommendations</i>	71
Piecemeal reform, muddling through: Shifting alliances and blockers	72
<i>Drivers</i>	72
<i>Challenges</i>	73
<i>Recommendations</i>	73
Start local and/or sectoral: Showcase success to persuade others	73
<i>Drivers</i>	74
<i>Challenges</i>	74
<i>Recommendations</i>	74
Further readings	76
Sources	77
Appendix	84
Legal coding template	84
Variable list used for data quality assessment	86
Semi-structured interview guiding questions	88
Interview coding frame	90

1. EXECUTIVE SUMMARY

This report aims to evaluate the effectiveness and fit of open contracting reforms to LMIC contexts and to provide recommendations on how and when countries should pursue open contracting reforms. This objective was broken down into the following questions on reform outcomes and reform drivers.

1. How advanced and comprehensive is the legal framework for open contracting? How did it evolve in the last 10-15 years?
2. To what extent are the laws relating to public procurement transparency and accountability implemented? How did the comprehensiveness and quality of publicly available government contracting data evolve in the last 10-15 years?
3. What is the political-economic context in which public procurement occurs? Who are the main actors in government and civil society, what are their power relations and interests? Which actors have driven or blocked open contracting reform?
4. Which conditions and institutional capacities have facilitated or hindered public procurement transparency reform?
5. Which reform strategies have proved most successful and unsuccessful in which contexts? What were the typical time frames and pathways for successful reform that can inform design of future advocacy strategies?

The methodology employed incorporates a number data collection and analytical methods. This includes legislative mapping by tracing changes in the main laws governing public procurement and its transparency; procurement data collection and analysis of data quality and availability; over 100 key informant interviews (mostly online). Our findings were used to inform our analysis of the drivers of reform, in order to identify those reform strategies which worked and those which did not work. These successes and failures offer insights into effective strategies for advocates of open contracting reform, and into the types of strategy which are most suitable in given conditions.

We included nine LMICs which are at different stages of the reform process regarding transparency in public procurement in this research: Bangladesh, Indonesia, Kenya, Nepal, Nigeria, South Africa, Tanzania, Uganda, and Zambia. Their variation in progressing on legal frameworks for open contracting and publishing open contracting data become apparent in the below graphs generated by our legal and data mappings.

Legal score comparison

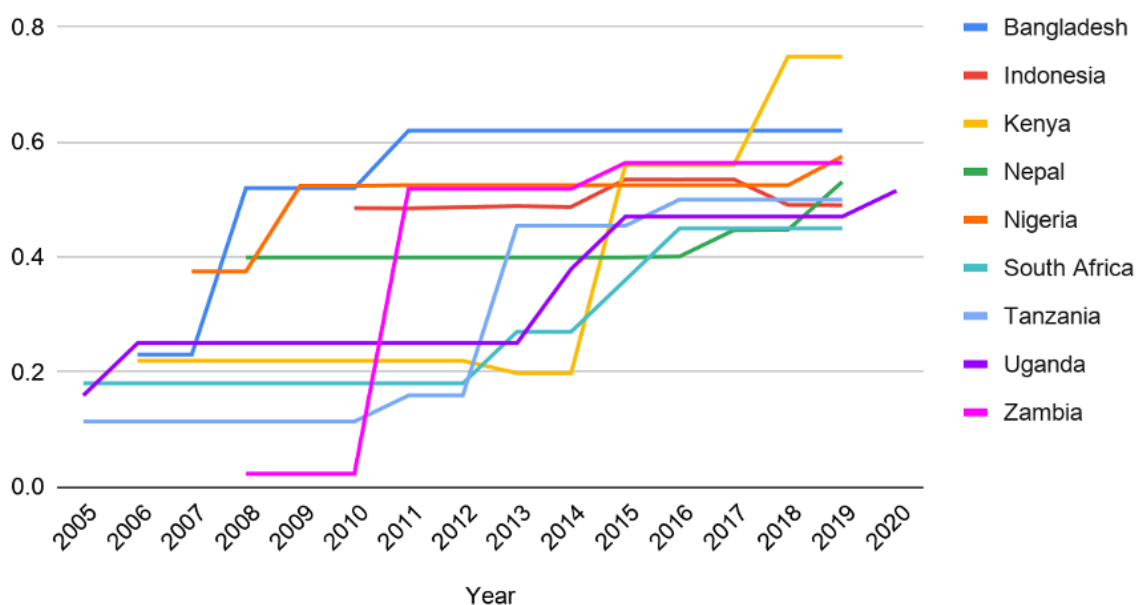


Figure 1: Comparative graph of countries' scores on public procurement transparency in their legal frameworks. (own mapping)

Data score comparison

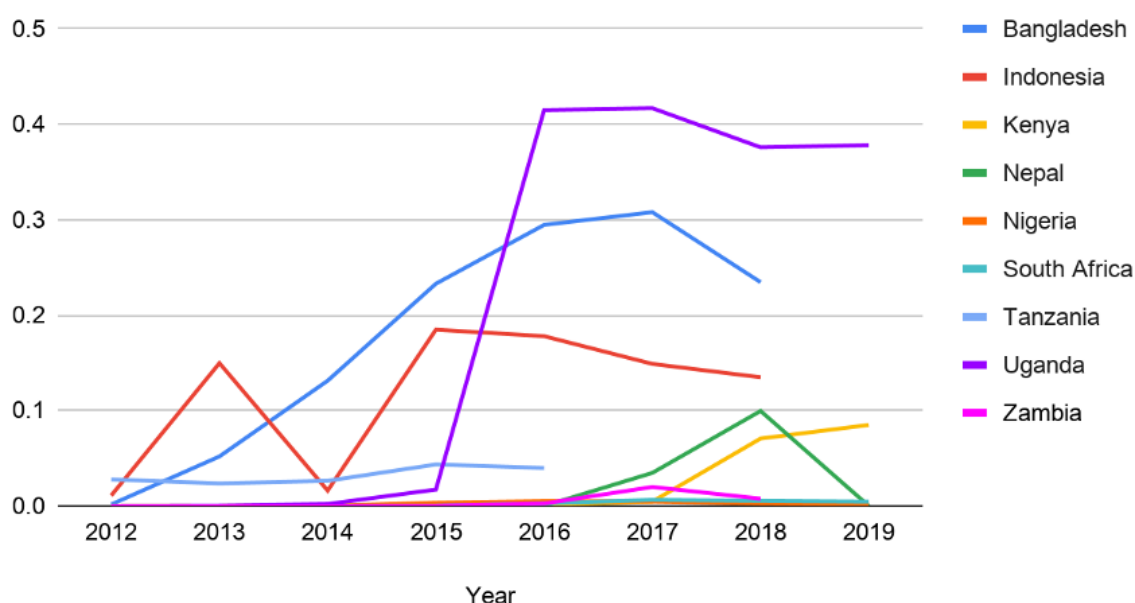


Figure 2: Comparative graph of countries' scores on data quality and availability based on their publicly available procurement data.

Key findings

For all countries, the evidence demonstrates that there is a clear lag between progress in reforming the legal framework and progress in its implementation - de jure and de facto reform. In other words, legal reform is only the first step towards change.

Careful assessment of political will and capacity should be the first step towards designing an advocacy strategy. Political will should be analysed in context - ie it depends on the incentives, temptations and constraints facing political leaders. 'Tone at the top' is critical to reform efforts. If the message from the top leadership is that reform is a priority, this helps to convince other actors to pursue it even when confronted with obstacles. Consistent leadership in the key institutions charged with implementation is important to success. Where this did not exist, reform often lost momentum.

In terms of capacity, the most important constraint to note is that, generally, in low- and middle-income contexts, public administration is in any case strained in its ability to fulfil its functions and provide public services. Even in the most open and reform-minded governments, transparency - whether publishing contracts data or responding to Rtl requests - is often seen as a luxury to which they cannot always pay attention. Capacity constraints manifest in several ways: poor record management, lack of specialist procurement skills, and weak ICT skills and infrastructure.

In some political economy contexts, framing open contracting as a way of improving efficiency and economic competition may make it more palatable than framing it as an anti-corruption tool or in terms of the intrinsic value of transparency. The advantage of an efficiency framing is that it turns open contracting into a way of saving money which is likely to attract broad support in low-resource contexts and, if framed in this way, can attract the Ministry of Finance as a powerful sponsor. Equally, procurement can be seen as a way of developing the economy and supporting local businesses, rather than as a tool for transparency. In general, few government officials or civil society actors in the countries studied discuss public procurement in this light, in contrast to Latin America and Europe where the role of procurement in stimulating SMEs and local economies is a core message.

Drivers of reform

Societal drivers There is little evidence of popular demand for accountability and anti-corruption, or electoral pressure for transparency. The main exception is that scandals can create windows of opportunity for reform, hence these should be recognised as key opportunities. Nor is there much evidence of pressure from the private sector to increase the openness of procurement or widen access to contracts. This partly reflects the weakness of the private sector in general in the countries studied.

Internal government drivers Within governments, there are two main motivations for pursuing public procurement reform. First, governments may regard PP reform as a good way of making financial savings, particularly in contexts where they face fiscal pressures from being highly indebted and lacking revenues. Second, central government demand may see procurement reform as a way of gaining greater control over local or sectoral bodies.

External drivers There is little evidence that international donors and lenders exert much influence on national-level political will to reform procurement, but they are more relevant as supporters of capacity-building once the will to reform has been established. Commitments to the OGP are helpful, but mainly because they provide a benchmark against which local CSOs can seek to hold governments to account and call them out for implementation failures.

Recommendations

1. While legal reform is in most cases critical to progress, CSOs should avoid using all their political capital on achieving legal reform. Equally important is to ensure that resources are allocated and capacity built to ensure effective implementation.
2. Invest in persuading top leaders to make public commitments to reform.
3. While it is difficult for CSOs to influence government personnel decisions, there are strategies for mitigating the risk of changes in leadership. First, build broad networks to avoid being too reliant on one individual or institution. Second, seek to put key relationships on an institutional footing - eg with Memoranda of Understanding to define commitments - rather than relying on informal ties among individuals who may leave office.
4. Where legal frameworks in a particular context are ambiguous, CSOs and governments could consider developing simple educational materials to help clarify them and posting them online as a cheap, relatively accessible and potentially impactful activity.
5. Adapt framing and advocacy messages to support the political economy context. If political commitment to openness and transparency appears weak, opt for a framing that emphasises efficiency gains of economic development benefits. Such framings can help attract powerful sponsors such as the Ministries of Finance or Economy, or private-sector alliances.
6. Scale reform ambitions to the available political will and capacity in the local context. Over-ambitious plans risk losing momentum, whereas even piecemeal changes build useful skills and 'scaffolding' for future reform.
7. In situations where high-level political will is lacking, focus advocacy efforts on building up capacity, e.g., by focusing on the more technical side of putting in place e-procurement or improving data infrastructure, or by creating a cadre of public officials trained in good practice in public procurement.
8. To assist with building capacity, in addition to providing technical support, it is important to build confidence in managing data and showcasing the benefits of data analysis. This can also help build local pressure on political leaders.

7 Modelling Reform Strategies for Open Contracting in Low and Middle Income Countries

9. Leverage scandals to build support for reform, both with the public and with elements of government which will be interested in demonstrating that they have responded to underlying problems.
10. Engage with private-sector associations to understand the problems they face and demonstrate how open contracting can help, so as to build them up as allies and advocates.
11. Assess the political economy context to identify how open contracting can be framed as a solution to problems that particular parts of government are grappling with.
12. Recognise that different parts of government may have different motivations for pursuing procurement reform, and tailor advocacy messages accordingly.
13. International donors and NGOs should coordinate at the national level to ensure maximum impact of advocacy efforts and to target technical assistance appropriately.
14. Organisations promoting open procurement data should use the methods outlined in this report to identify relevant features of the local political economy context and use this to design an appropriate reform strategy (see Figure below).

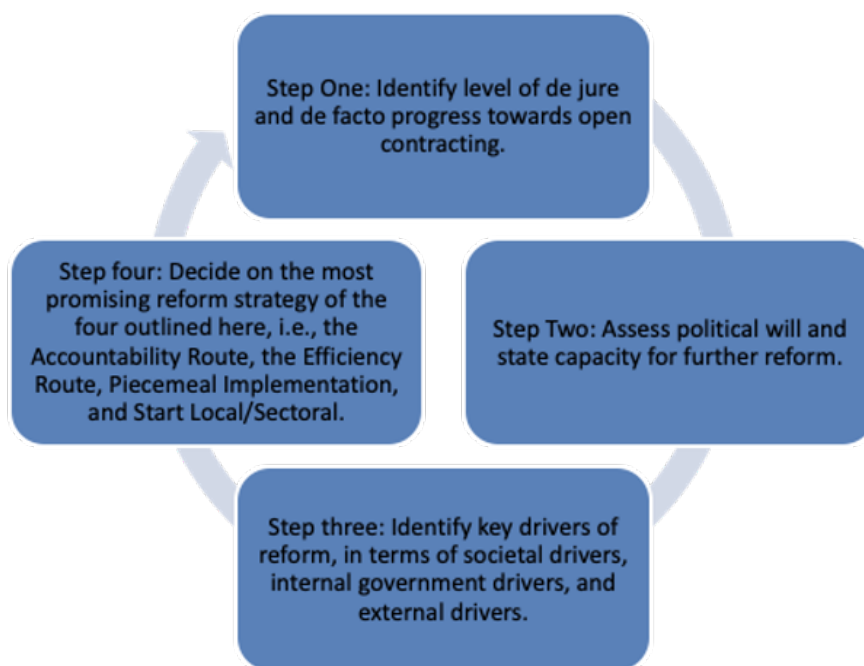


Figure 3: Four-step guide to deciding advocacy strategy

1. The Accountability Route: Transparency at the heart.

In the accountability route with transparency at the heart, such as in Uganda, reform is driven by sustained public demand for accountability and anti-corruption in order for government actors to pay attention and be motivated to act.

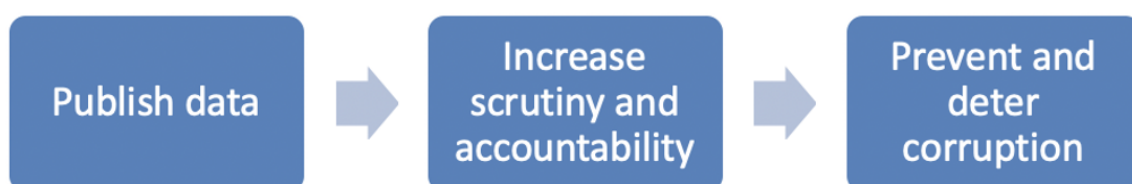


Figure 4: The Accountability Route

Civil society's role is to champion transparency and amplify public anti-corruption demands, making the link between transparency and reduced corruption. It should also assist in providing the blueprint for reform content such as data structure, e-procurement system design, and data publication protocols.

2. The Efficiency route: Transparency as a byproduct

In the efficiency route with transparency as a byproduct, as in Bangladesh and Kenya, reform is driven by governments' desire to improve efficiency of public procurement. Although transparency is not at the heart of the reform, creating efficient, electronic systems for procurement and the underlying datasets lays the foundations for accountability. Transparency can also be coupled with the efficiency agenda through the participation of suppliers, which need open tendering information to compete.



Figure 5: *The Efficiency Route*

Civil society can play a technical support role, helping to create or test data infrastructure and analytics. In terms of advocacy, civil society can promote transparency by providing evidence that it delivers additional efficiency gains and promotes competition, furthering economic development and supporting key business actors such as SMEs.

3. Piecemeal reform, muddling through: Shifting alliances and blockers

The route of muddling through with piecemeal reform, as in Indonesia, recognises that public procurement is a major administrative challenge in itself that involves many actors with power to block reforms.



Figure 6: *The Piecemeal Reform Route*

Civil society advocates need to closely monitor and flexibly adapt to the changing political and institutional landscape by looking for new alliances. They should be prepared to support a diverse set of actors and seek to build coalitions among groups that have an interest in reform, even if for different reasons, so as to build momentum for open contracting reform. Civil society should seek to use the changing nature of alliances to expand learning and build capacity across government, improving the overall framework for transparency step by step.

4. Start local and/or sectoral: Showcase success to persuade others

Reform can also start on sub-national and/or sectoral levels, which then become a showcase for others. As public procurement is a politically sensitive and technically complex area where it is often difficult to gain or sustain reform momentum for a large-scale national transformation, a number of the countries studied here have initially made progress in initiatives that focus on a particular sub-regional area and/or on a specific sector. Once success has been achieved in one discrete area, whether that is a city or a sector such as infrastructure or healthcare, and concrete benefits are observed, it becomes easier to persuade other actors to implement reform elsewhere - and harder for political actors to deny the benefits. This strategy tends to be driven by progressive local leaders who are personally interested in reform, sometimes because they are from opposition parties and see this as a good opportunity to promote their policy agenda.



Figure 7: *The Local or Sectoral Route*

Civil society groups and international donors should be prepared to support local leaders or sectoral initiatives when opportunities arise, adapting flexibly to changes in political context. For example, engagement can be (a) demand-driven, where you engage if and when someone approaches you asking for help; (b) problem-solving, where you anticipate which actors will have which needs at what time and propose solutions, e.g. looking at when a government needs to report progress on their OGP commitments such OGP; and (c) progressive: embarking on the long journey to build citizen's voice and capacity and create bottom-up demand through local CSOs or infomediaries.

Keep in mind how success in short-term initiatives could be expanded to wider reform, e.g., routes to policy transfer - bearing in mind that this may be politically sensitive if reform success is associated with opposition candidates.

Features of the broader political context may be important. For example, the covid crisis means that corruption in healthcare procurement has high saliency with governments and that international donors are reorienting aid towards this issue. At the same time, many governments in LMIC countries are facing fiscal pressures that heighten the salience of efficiency-promoting strategies. This creates opportunities and resources for promoting transparency particularly in healthcare procurement.

2. INTRODUCTION

In many countries around the world, particularly Low and Middle Income Countries (LMICs), grand corruption is not an occasional phenomenon that deviates from the general norm but represents the dominant norm, being entrenched across all levels of government, in the overall culture and social systems. While politicians frequently promise to fight corruption in their campaigns, we rarely see “big bang” reforms that actually deliver on such promises. Given such adverse conditions, how can we find entry points reducing corruption?

One approach is to drive forward transparency and accountability reforms in key sectors and government functions which can make a big impact, but to do so initially by targeting individual sectors and sub-national units where there are pockets of political will. By demonstrating effectiveness in these areas, it may then be possible to build support for reform elsewhere.

TI's Open Contracting for Health (OC4H) project takes this approach, focusing on a critical sector, healthcare, and on one government function, public procurement. Corruption in health procurement can result in medicine shortages, inflated drug prices and the infiltration of falsified and substandard medicine into the health system. The quality of health services decreases and citizens end up paying for their health out-of-pocket.

OC4H's drive to promote open contracting in healthcare in LMICs builds on a track record of success in e-procurement and open contracting reforms around the world, which have led to increased competition, improved service provision and better value for public money. However, most of these successes have occurred in middle- or high-income contexts which have the infrastructure and capacity to support modern and demanding data-driven tools. There is little evidence as to whether this approach is transferable to contexts where such support is more limited.

This report aims to evaluate the effectiveness and fit of open contracting reforms to LMIC contexts and to provide recommendations on how and when countries should pursue open contracting reforms. In order to meet the above objectives, we need to paint a nuanced and robust picture by breaking the problem down into distinct components and research questions. Our methodology explored the following guiding questions, first seeking to map the reform process and its results, before analysing the drivers of reform and conditions necessary for success.

Reform results:

- How advanced and comprehensive is the legal framework for open contracting? How did it evolve in the last 10-15 years?
- To what extent are the laws relating to public procurement transparency and accountability implemented? How did the comprehensiveness and quality of publicly available government contracting data evolve in the last few years?

Reform drivers:

- What is the political-economic context in which public procurement occurs? Who are the main actors in government and civil society, what are their power relations and interests? Which actors have driven or blocked open contracting reform?
- Which conditions and institutional capacities have facilitated or hindered public procurement transparency reform?
- Which reform strategies have proved most successful and unsuccessful in which contexts? What were the typical timeframes and pathways for successful reform that can inform design of future advocacy strategies?

11 Modelling Reform Strategies for Open Contracting in Low and Middle Income Countries

Such a complex set of research questions requires a combination of different data collection and analytical methods:

- The extent of reform and its results, both in legislation and practice, were assessed by tracing distinct, measurable changes in the main laws governing public procurement and the publicly available datasets. We followed the methodology established by the EU-funded DIGIWHIST project for Europe¹, in particular EuroPAM² for legislation and comprehensive tender information mapping for data assessment³. In these exercises, legislative and public data developments are traced annually along a large number of dimensions to calculate an overall transparency score. This bottom-up approach allows for tracing the minute details of reform results, while also offering a high-level overview.
- Reform drivers, actors, their interests and powers, were mapped using a mix of document analysis and more than 100 key informant interviews. We reviewed official documents, academic literature and descriptions of key actors and explored actor behavior through interviewing key policy makers both inside and outside of the government. Given the COVID-19 situation almost all our interviews took place online.

Our findings regarding reform results were used to inform our data collection and analysis of the drivers of reform, in order to identify those reform strategies which worked and those which did not work. These successes and failures offer insights into effective strategies for advocates of open contracting reform, and into the types of strategy which are most suitable in given conditions.

In order to gain robust and widely applicable insights, we looked at 9 LMICs which are at different stages of the reform process regarding transparency in public procurement and different stages of e-procurement maturity. These countries are located in Africa and Asia, and are the following:

1. Bangladesh
2. Indonesia
3. Kenya
4. Nepal
5. Nigeria
6. South Africa
7. Tanzania
8. Uganda
9. Zambia

In the remainder, we first discuss our theoretical framework before detailing our methodology. Second, we provide an in-depth descriptive narrative for each country which sets out the progress achieved and the main aspects of the context. Finally, we synthesise the evidence to arrive at comparative observations which underpin our policy recommendations.

1. <http://digiwhist.eu/>

2. <http://europam.eu/>

3. <http://digiwhist.eu/publications/towards-a-comprehensive-mapping-of-information-on-public-procurement-tendering-and-its-actors-across-europe/>

3. THEORETICAL FRAMEWORK

The theoretical framework is set out in order to facilitate the analysis seeking to document open contracting reform results and to explain which factors facilitated and hindered effective transparency reform in this area. This framework is relevant for all countries, not just LMICs.

In order to reliably trace **transparency reform results**, we have to define transparency in public procurement and outline its key dimensions. At the highest level, following recent academic debates, transparency refers to the availability of relevant information about an organization or process that allows for monitoring by those outside (Bauhr et al, 2020). Applying this definition to the complex government function of public procurement yields two dimensions for conditions for transparency:

1. Public procurement data must be **open by law**, which means it must be placed in the public domain or under liberal terms of use with minimal restrictions.
2. Public procurement data must be **open in practice**, which means it must be published in electronic formats that are machine readable and non-proprietary, so that anyone can access and use the data using common software tools. Data must also be publicly available and accessible on a public server, without password or firewall restrictions.

(Adapted from the World Bank's **Open Data Toolkit**)

Regarding openness by law, we track in particular the de jure legal framework governing public procurement information. Regarding openness in practice, we track in particular the de facto implementation of online data publication to establish whether electronic data is publicly accessible and whether it is usable - critical features of open data.

Tracing **drivers of reform** is a difficult enterprise because public procurement is a cross cutting government function of very high complexity and value. It includes just about everything governments buy from school meals to nuclear submarines. Because it typically implies a standard set of procedures all across government, it influences behavior of vastly different public (buyers) and private actors (bidders). In addition, public procurement is core to what governments do: public service provision and public investment programs rely on efficient and effective public procurement systems.

All these characteristics mean that reforming public

procurement, including transparency in procurement, is subject to government and economy-wide pressures, strong bureaucratic inertia and challenges of technical and legal complexity. This means that muddling through and incremental, piecemeal reforms over long time frames are the norm (Lindblom, 1959). There are hardly any genuinely quick, “big bang” reforms which actually deliver.

Due to the centrally defined rules and data systems used in most e-procurement systems, transparency in public procurement is intimately intertwined with power in government. Hence, pursuing procurement reform and data systems raises key fundamental questions about state capacity, central control versus local autonomy, and fundamentally about government authority. These coupled with widespread corruption in most public procurement systems in LMICs mean that no aspect of transparency or data system reform in public procurement is purely technical or non-political. Even seemingly minor technical details can have central political importance as they may enable investigation of powerful actors's behaviour.

The fundamentally political nature of transparency reform in public procurement implies that we should expect to observe very different mechanisms and power relations in autocratic versus democratic regimes. While the distinction between these two regime types is continuous rather than sharp, we should nevertheless see distinct actor constellations, power relations, and modes of exercising public authority.

The analysis of drivers and blockers for open contracting reform utilizes 2 broad categories of explanatory factors:

1. **Political will** for initiating and maintaining reform; and
2. **Capacity** and skills for instituting and implementing reform (technical and legal).

The focus is on the presence or absence of these factors within governments, but the report also discusses how other actors including CSOs and the private sector as well as international donors can augment these factors.

Any successful transparency reform process, which is typically long-term and may include frequent reversals, imposes constraints on the powerful by decreasing information asymmetries between insiders (e.g. government officials) and outsiders (e.g. civil society) (Bauhr et al, 2020). Hence, those in power are most likely disinterested in genuine transparency reform as it would impose limitations on them, leading to greater demands

13 Modelling Reform Strategies for Open Contracting in Low and Middle Income Countries

for accountability and higher risk of being punished for corruption. Thus, power holders are expected to avoid demands for transparency, deflect genuine compliance and instead engage in symbolic compliance with transparency requirements. At the same time, civil society and businesses are interested in greater transparency in order to control government and improve business opportunities.

These presumptions yield a small number of potential drivers and strategic government responses. First the main drivers:

1. Societal drivers
 - a. Popular demand for accountability and anti-corruption, including by CSOs;
 - b. Electoral pressure for accountability and anti-corruption;
 - c. Business pressure for greater openness and access to contracts;
2. Internal governmental drivers:
 - a. Budgetary pressures for improving savings and financial performance;
 - b. Central government demand for greater control of local and sectoral bodies;
3. External drivers:
 - a. Donor and/or international lenders' pressure for greater efficiency and predictability, and to reduce corruption.

Second, as a response to some or all of these pressures, more or less corrupt political elites may choose to pursue different degrees of transparency reform:

1. Transparency on the books: the principles of transparency are established in law but are either imprecisely formulated or corollary implementation structures (e.g. monitoring institutions) are lacking.
2. Cosmetic implementation of transparency reform: not only principles but also implementation structures necessary for transparency are created. However, the quality of implementation in terms of data scope, completeness, and accessibility is so poor that transparency remains very low (e.g. key information is in pdf files that are hard to analyse or access).
3. Authentic implementation of transparency reform: the legislative framework as well as implementation structures are in place including key institutions such a central procurement coordinating body, an arbitration court, and a functioning e-procurement system.

Moreover, even if the transparency reform is successfully implemented and maintained (type three), its ultimate effect on efficiency and anti-corruption still depends on a host of supporting factors and institutions, such as independent courts and state auditors, and a vibrant business community competing vigorously for government contracts. If monitoring and sanctioning institutions are under the control of powerful elites, high-level corruption may remain untouchable even in conditions of authentic transparency.

4. METHODOLOGY

In order to offer a robust and comprehensive evidence base in this study, we employed a combination of different data collection and analytical methods. Reform results, both legislation and practice, were assessed using quantitative methods to trace distinct, measurable changes either in the main laws governing public procurement or the publicly available datasets. In these exercises, legislative and public data developments were traced annually along a large number of dimensions, with an overall transparency score calculated at the end. This bottom-up approach allows for tracing the minute details of reform results, while also offering a high-level overview.

Reform drivers, actors, their interests and powers, were mapped using a mix of document analysis and key informant interviews. We reviewed official documents, academic literature and descriptions of key actors and explored actor behavior through interviewing key policy makers both inside and outside of the government. Given the COVID-19 situation almost all our interviews took place online.

Given the contested and politicised nature of transparency reform in public procurement, a key challenge of the research methodology was to differentiate rhetoric from actual reform and genuine effort from mere pretence. This was achieved, on the one hand, through identifying what matters for transparency, in terms of legal provisions such as reporting thresholds and particular behaviors such as contracts being published on an accessible public website. On the other hand, drivers and blockers of reform were traced by triangulating explanations and claims from multiple sources, especially through interviews with multiple stakeholders with insights about the same events.

Data collection methods

Qualitative and quantitative data were collected using 4 distinct methods:

1. Coding of legal framework;
2. Data scoring;
3. Desk research including the review of government documents and descriptions and a country-specific literature review; and
4. Key informant interviews.

Coding of the legal framework followed the full EuroPAM⁴ methodology established by the EU-funded DIGIWHIST project for Europe⁵, with selected additions focusing on transparency by drawing on the global TPPR⁶ coding template. Our comprehensive coding template aims to capture all relevant aspects of public procurement legislation and institutional framework in 3 layers: quantitatively (i.e. a single score), qualitatively (i.e. 1-3 sentence descriptions) and by referencing the legal text precisely (for the full coding see [here](#)).

With regards to public procurement transparency, we traced:

- Reporting thresholds, with lower thresholds implying greater transparency;
- Publishing format and record keeping methods, such as mandatory electronic publication of tender documents; and
- Publication content, such as the inclusion (or not) of final beneficial owners of the winning bidder.

For the full list of questions assessed see appendix A.

Responses to each of the legal framework coding questions were transformed into a score between 0 and 1 with 0 meaning the absence of the particular legal provision and 1 implying the existence of the provision to the full extent. For each year the overall legal comprehensiveness score was calculated by averaging over all questions. By default all years were coded separately unless there was no new public procurement law or amendment, in which case the same score was assigned as the previous year.

Data scoring followed the methodology for comprehensive tender information mapping of DIGIWHIST⁷. It traced 2 key dimensions of public procurement datasets as actually published on a central website(s):

- Scope: amount of published contracts as compared to the total value of public procurement spending in the country.
- Quality and depth: rate of data availability following a standardized list of variables as recommended for comprehensive procurement corruption risk analytics by Mendes & Fazekas (2017) (Full variable list can be found in Appendix B).

4. <http://europam.eu/>

5. <http://digiwhist.eu/>

6. <https://www.tpp-rating.org/>

7. <http://digiwhist.eu/publications/towards-a-comprehensive-mapping-of-information-on-public-procurement-tendering-and-its-actors-across-europe/>

15 Modelling Reform Strategies for Open Contracting in Low and Middle Income Countries

Each of these 2 dimensions was independently scored between 0 and 1 with 0 representing no data and 1 representing the maximum meaningful data. Then the combined data score was assigned by multiplying the scores for the two dimensions.

The **desk research** aimed to be as comprehensive as possible by identifying relevant government documents, such as the laws of the past 10-15 years, government circulars, annual procurement reports, descriptions of institutions, and also the relevant policy reports and academic literature. From these documents, we could extract key insights on the broader political economy context, actors, powers and capacities, as well as institutional goals and motivations.

113 **key informant interviews** were conducted, 5-20 per country, over the internet or the phone in order to solicit views of key actors, to verify the findings from the legal framework and data coding as well as the desk research. These interviews were crucial in offering nuance and context to our findings, and they also offered invaluable insights into reform drivers and mechanisms. The full interview guide can be found in Appendix C.

The interviews were recorded and key findings noted down in order to allow for structured processing of the collected qualitative data. For the full interview coding schema see Appendix D⁸.

Method of analysis

The analysis of the collected empirical material followed the structure of the research questions outlined in the introduction while also building on our theoretical framework. First, reform results were established and analysed and second, reform processes and drivers were identified and traced in detail.

Reform results were traced over time using the legal and data scores calculated as outlined above. Moreover, the quantitative information was assessed in the light of changes in public discourse about open contracting data while the scores were given substantive meaning in the country context using qualitative information from documents and interviews. By systematically tracing legal or de jure transparency as well as de facto transparency, we could establish implementation gaps and identify cases of cosmetic compliance, that is when governments pretend to support transparency reform but do not make a tangible effort to implement it and hence achieve poor results.

Reform drivers were assessed and traced using a comprehensive political economy analysis. This analysis

started by identifying key actors, their powers, interests, and capacities, before analysing two broad impact mechanisms that either drive or block reform:

- **Political will** or motivations for open contracting reform; and
- **Capacity** for formulating and implementing open contracting reform.

We employed careful process tracing in order to identify and link the causes of OC reform to its key drivers falling in these two categories (Beach, 2017). We looked out for main drivers and narratives around anti-corruption/transparency versus efficiency/savings motivating actors to pursue open contracting reforms. As for capacity, we assessed where key skills and competences reside, for example in key government agencies or external actors such as CSOs.

Identifying strategies that work

Building on the rich empirical material and careful mixed methods analysis enabled us to draw key lessons as to which reform strategies appear to work best under which conditions. These strategies are identified by bringing together our key insights from all 9 countries including those which succeeded as well as failed in achieving substantial open contracting reform.

Each identified successful strategy includes the key

- Narrative of reform such as increasing efficiency,
- Description of allies and champions of reform,
- Entry and pressure points for reform, and
- Capacities which enabled reform in such a technically and legally complex field.

In addition, we have sought to understand whether it is better to focus reform on a particular sector or to seek to implement open contracting more widely, and whether or not it is strategic to embed open contracting into wider transparency reforms. Recognising that transparency in procurement encompasses a range of issues, we seek to understand which aspects can be addressed through data-driven solutions and which remain outside the realm of open data.

Our analysis draws on evidence - where available - of the impact of these competing advocacy strategies, but also extrapolates from our findings about key drivers and obstacles, to offer more speculative recommendations where evidence is lacking.

8. We used the software Dedoose for classifying statements made by our interviewees and analysing them in a structured and transparent manner.

Country selection

After screening a broad list of countries from around the globe, 9 countries were selected for this analysis. The selection process applied a range of filters in order to deliver a balanced and diverse sample of case studies to allow us to draw robust and widely applicable insights. We included only those countries which had at least some public procurement reform, while making sure that the level or maturity of reform varied across the cases selected. In addition, we included countries where there were some civil society activities around OC, and we also considered UK DFID priorities.

Eventually, we selected 9 LMICs which are at different stages of the transparency reform process and different levels of e-procurement maturity. These countries are located in Africa and Asia, and comprise the following:

1. Bangladesh
2. Indonesia
3. Kenya
4. Nepal
5. Nigeria
6. South Africa
7. Tanzania
8. Uganda
9. Zambia

5. COUNTRY FINDINGS

BANGLADESH

Overall assessment

The introduction of an electronic government procurement system (e-GP) and the digitization of the entire procurement process were very significant steps to open the country's procurement system. Before the e-GP portal, there was no open platform where citizens could freely access procurement-related information. Now, with the increasing number of government agencies registering for e-GP, a large volume of procurement-related information can be accessed through a public portal. Key data-owning agencies, such as the Ministry of Planning and the procurement agency, have publicly supported openness in public procurement, and have also established individual policies expressing their obligations to release information regarding planning, procurement, and implementation of public contracts.

Reform strategies

The significant progress in Bangladesh reflects the aligned incentives of the World Bank and the government of Bangladesh, creating a powerful alliance with sufficient resources. The government's motivation for reform was rooted in the desire to curb the physical intimidation of bidders and the high levels of corruption among procurement officials. This case thus represents a **combination of internal governmental drivers in terms of central government demand for greater control over public procurement paired with the external driver of an international lender's pressure and support** for greater efficiency and to reduce corruption. The comprehensive legal framework put into place created a uniform procurement system which laid the basis for transparency reforms. The strong push by CPTU and the WB to roll out the e-GP as well as the quick take-up of key agencies, helped to realise the reform. The four major agencies with the highest number of procurement services took part in advocacy and awareness campaigns for e-GP and spread the word about its importance and useability.

Country governance context

Bangladesh, officially called the People's Republic of Bangladesh, is a sovereign country in South Asia. It is the world's eighth-most populous country. Bangladesh has made significant economic strides since independence in 1971. It has enjoyed relatively high and stable growth

over the last two decades, accompanied by rapid poverty reduction. Gross domestic product (GDP) growth averaged close to 6% annually since 2000, partly due to a thriving textile industry. Bangladesh has moved into lower middle-income country status⁹ since 2015 (World Bank, 2018a).

The major acceleration in Bangladesh's growth happened in the democratic period of 'competitive clientelism' (Khan, 2017) since 1990 where the two major parties circulating in power represented similar constituencies in terms of economic interests. This created political stability and high rates of investment, even if it was at the cost of high levels of corruption. This political settlement began to change after the failure of the 2006-2008 emergency that attempted to radically reform the corrupt clientelist politics that had characterised democratic politics. During the tenure of the Emergency Caretaker Government, Bangladesh acceded to the United Nations Convention against Corruption (UNCAC) in 2007 and has in place almost all the requisite formal laws. However, implementation has generally been very poor (Khan, 2017). After 2008, the constitutional and administrative changes made reduced the chances of opposition parties winning an election and since the controversial 2014 elections, a single-party rule system has been emerging. Recently, a high-profile anti-corruption drive was launched by a political party-led government targeting some leaders and activists within her party, which raised many expectations (TI-B, 2017; Iftekhharuzzaman, 2019).

The Anti-Corruption Commission (ACC) highlights that public procurement, government recruitment, project approval and implementation continue to be the key corruption-prone areas. Corruption stories, such as the Padma bridge project or the "pillow scandal" in the Rooppur nuclear power project, regularly dominate media headlines. The allocation of large government construction contracts is an important way of creating coalitions of the powerful to support the ruling party in administrative and other ways (Khan 2017). In the World Bank's Enterprise Survey of 2013, 49% of firms in Bangladesh expected to "give gifts" to secure a government contract. Before the wide-ranging procurement reforms of the last years, the occurrence of collusive bidding and the physical intimidation of rival bidders was common.

9. GNI per capita between \$1,006 and \$3,955

PP Profile

There has been growing recognition within Bangladesh that improved governance is a prerequisite for improving investment climate and accelerating private sector-led economic growth. In 2008, it was estimated by some that economic losses due to overall corruption were costing the country about 2.5% in GDP growth each year (World Bank, 2008). Public procurement reform in Bangladesh started in 1999 after various public projects did not perform well, with the initiation of an assessment of the public procurement policy framework, institutions, and staff skills at the national level. The Implementation, Monitoring, and Evaluation Division (IMED) under the Ministry of Planning collaborated with the World Bank on a procurement assessment report, which identified many deficiencies in the public procurement system. The Country Procurement Assessment Report (CPAR) 2002 identified several weaknesses including (i) fragmented procurement system and procedures across the country, (ii) weak standard tender documents, (iii) delay in the procurement process due to complex bureaucracy, (iv) absence of procurement policy formulation unit, (v)

weak contract administration, (vi) lack of professional competencies, and (vii) absence of complaint handling mechanism. This illustrates that transparency and openness of the procurement system were not a key part of the initial aims.

Following the recommendations of the Country Procurement Assessment Report 2002 (CPAR 2002), the GoB implemented two procurement reform projects with the technical and financial support from the World Bank and is currently implementing the third reform project. These were the Public Procurement Reform Project (PPRP) implemented during 2002–2007 and PPRP II with two additional financings implemented during 2007–2017. The third project, Digitization of Implementation Monitoring and Public Procurement Project is now under implementation.

In the financial year 2019, the country's spending in public procurement was estimated to US\$ 24 billion, representing 45.2% of the annual budget and 8% of GDP. Since the roll-out of e-Procurement, 60% of total procurement value is spent through the use of e-Procurement, which accounts for 80% of procurement transactions. It is estimated that the use of e-Procurement saves the country US\$ 1 billion annually (The World Bank, 2018a).

The reform trajectory

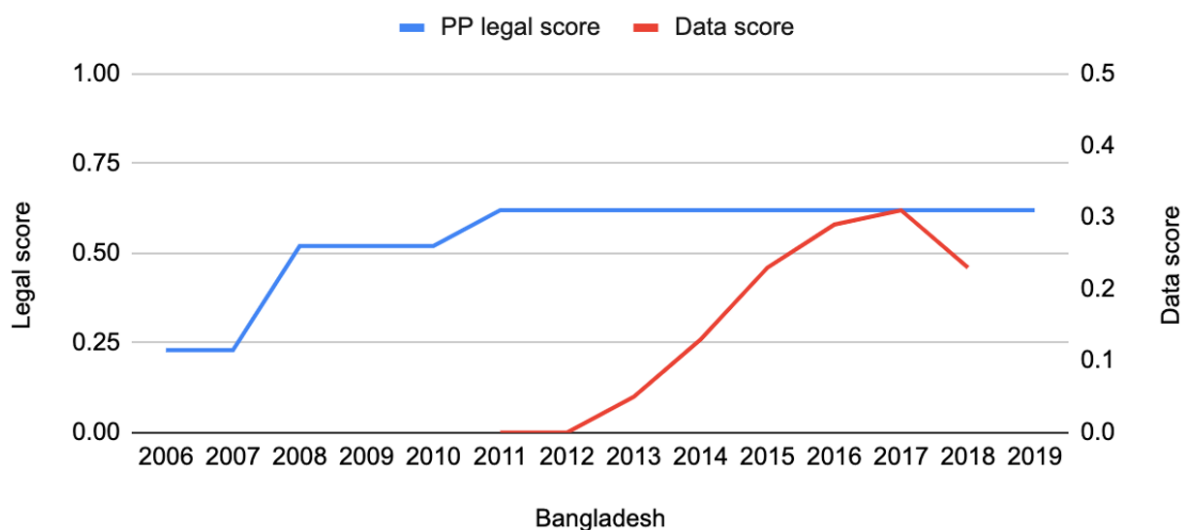


Figure 8: Development of Bangladesh's legal framework pertaining to transparency in public procurement and its public procurement data availability and quality score over time based on the data collected from the e-GP system in October 2018.

Legal framework

The government of Bangladesh has put in place a single legal framework as well as e-GP Guidelines mandating the procurement agency to publish procurement information and develop an e-GP system, which is not mandatory for procuring entities to adopt.

In 2002, the government established the Central Procurement Technical Unit (CPTU), a central procurement policy unit. With its input, the recommendations of the 2002 report were formulated into a comprehensive regulatory and policy regime for public procurement in 2003. These include the Public Procurement Regulations (PPR) 2003, and the Public Procurement Processing and Approval Procedures (PPA) 2004. The 2003 regulations were intended to bring all public-sector entities under one umbrella for systemic procurement and dissemination across the country to ensure that all the procuring entities would follow the standard procurement format to ensure greater accountability and transparency in the process. However, the application of the PPR and the PPA proved to be relatively inconsistent across the government and within individual agencies (Rahman, 2016).

Afterward, a single legal framework was created composed of Public Procurement Act 2006 and secondary legislation, Public Procurement Rules 2008. With the 2008 Regulations, the CPTU became legally required to publish information related to the procurement process, such as prequalification advertisements, advertisements with specific requirements and time limits, award notices, and reasons for rejection of proposals, although this was mainly aimed at the interested bidders. However, the Right to Information Act passed in 2009 stipulates that the procuring entities are mandated to proactively disclose information regarding procurement planning, process, and decisions and to provide this information upon citizen request. Nevertheless, the RTI Act has a long list of exemptions, including any information pertaining to a purchase process before it is complete or a decision has been taken about it.

The legal framework also assigned the responsibility of developing and managing the websites and an e-GP system to CPTU. In 2011, e-GP Guidelines 2011 were adopted to make the procurement process digital, online, and more open and transparent. These guidelines outlined the way to introduce and implement internet-based e-GP in Bangladesh's public offices. They clearly state that the general public (non-registered users) will be able to access all information and public records on procurement. The CPTU is also required to involve citizens and civil society in the public procurement processes.

Although it is not legally mandatory for procuring entities to use the e-GP system; the e-GP guidelines merely say it "shall be used". As the data mapping below details, CPTU has managed to encourage almost all procuring

entities to register. However, there is no requirement in the legislation for procuring entities to report allegations of fraud, corruption and other prohibited practices to law enforcement authorities and thus no procedure is prescribed for doing so.

Data mapping

Bangladesh publishes extensive procurement data to an unusually detailed level. However, transparency is weaker regarding access to procurement procurement documents and in the complaints system.

Current data availability and quality

Bangladesh provides procurement data from 2012 onwards, with the number of observations (one observation represents one procurement process) rising from a few hundred to 26,000 in 2017. The data covers most phases of the procurement cycle, including pre-tender information, calls for tender, modifications and cancellations, contract awards and signatures. It does not have information on contract implementation or supplier performance. The information provided includes key variables and identifiers such as tender IDs, supplier IDs and buyer IDs. Bangladesh provides a lot of detail on the procurement process, including unusual variables such as the reason for tender cancellation or the source of the funding or budget ID. Information relating to participating bidders in respect of the suppliers' names, quoted price, modifications, discounts etc. is disclosed at tender opening. The e-GP portal publishes this procurement information free of charge and without requiring registration.

However, the data is not published in a compiled dataset in an open data format. In addition, until now the e-GP does not contain procurement activities which are processed following the traditional manual procurement process (i.e., international procurements, consultancy services and direct procurements). In addition, there is no information related to the implementation of the contract, as procuring entities are not legally bound to release implementation data. The recently developed e-CMS system aims to address this by allowing monitoring of the physical and financial progress of a contract. Furthermore, access to procurement documents except tender advertisements is limited to government officials and the bidders. Although PPR 2008 prescribes the means of recording/registering complaints and the e-GP system facilitates the lodging of complaints through the system, procuring entities do not record information about complaints and their resolutions systematically.

Data system setup

In June 2007, the second WB-financed procurement reform project PPRP-II was approved by the government. One of its components was to introduce an e-government

procurement (e-GP) system. An **e-GP** system was launched in 2011, planned, developed and managed by CPTU with the support of WB and in-house staff and outsourced vendors. It covers end-to-end procurement processes starting from procurement planning to authorization of payment to the contractors/suppliers. The transitioning into e-GP started in 2011, but first only low value tenders were incorporated at four sectoral target agencies: the Bangladesh Water Development Board, the Roads and Highways Department, the Rural Electrification Board, and the Local Government Engineering Department. This encompassed 291 PEs of up to district level.

In 2014, only 50 government organizations had registered for the e-GP system, but since then its uptake progressed rapidly, as this graph from the WB's 2020 Assessment Report shows.

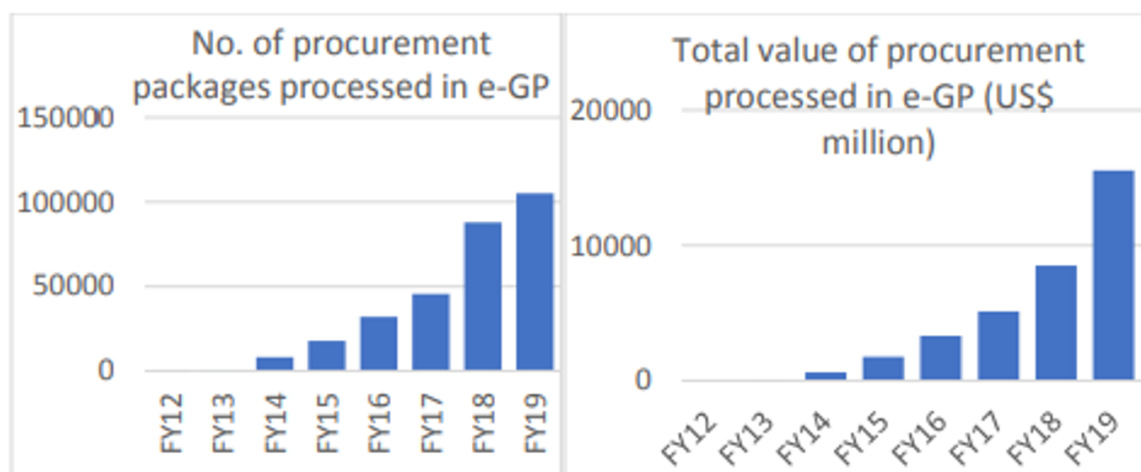


Figure 9: Number of procurement processes in the e-GP and the total value of procurement processed in the e-GP (World Bank, 2020)

As of FY19, out of 1362 public organizations in Bangladesh, 1325 organizations including state-owned enterprises and comprising a total of 8,668 procuring entities (units and offices under the organizations at all levels) as well as 65,559 bidders are registered in the system. The module up to contract award is fully operational now. However, the electronic contract management (e-CMS) and payment module has only recently been developed and is in a pilot phase now. This module will be rolled out progressively starting July 2020 (World Bank, 2020).

Currently, the e-GP system generates KPI based reports with 42 indicators. However, this report is not adequate to systematically analyse data. Only CPTU can generate reports taking data from the system. But the process is time consuming and labour intensive as programmers need to run codes to extract the data from the server. There is no standard data extraction template built into the system.

Recently, a **citizen portal** has been developed and launched with the support of the WB. This portal is connected with the e-GP system including the recently developed electronic contract management and payment module and publishes procurement and contract management data following the open contracting data

standard (OCDS). It also has features like searching and sorting of procurement data across the country based on all possible variables of procurement and contract management and generates corresponding charts to visualize the data. It also has features to show construction sites or places of contract performance in a map along with key procurement statistics. Citizen monitoring of contract implementation could help to tackle the problem that most of the contracts (70%) are not completed on time, causing delay and cost overrun.

Actors

Overall, despite moves towards more inclusion, the reform process remains top-down governed and does not recognise an autonomous role for civil society and other external actors to monitor procurement.

Government institutions

Several governmental organizations played a leading role in bringing transparency to public procurement. Firstly, the **Implementation, Monitoring, and Evaluation Division (IMED) under the Ministry of Planning**, was tasked with the implementation of the Public Procurement Reform Project-II. One of the components was to ensure good

21 Modelling Reform Strategies for Open Contracting in Low and Middle Income Countries

governance and transparency in public procurement. IMED has assigned CPTU to implement the four components of the PPRP-II, especially the establishment of the government's e-procurement platform.

The CPTU is the permanent government institution under the IMED for procurement monitoring, coordination, and management to ensure good governance in public procurement. The main intention of CPTU is to implement the Public Procurement Reform Projects such as gradually introducing e-GP and to ensure that all stakeholders comply with the legal framework. It has formulated the e-GP guidelines and introduced e-GP to make the public procurement process online and transparent.

CPTU is headed by a director general who reports to the secretary of the IMED. The CPTU is heavily dependent on consultants, even in the case of formulating any expert opinion to stakeholders. Except for some technical positions almost all posts of CPTU are manned by the secondment of officials from the civil service. Operation and maintenance of the e-GP system and data centre now depends on external experts. It is planned to convert CPTU into an independent government agency to be known as the 'Bangladesh Public Procurement Authority (BPPA)' to enhance in-house institutional and technical capacity and gradual lessening of dependency on external support. In sum, CPTU has a strong obligation and mandate for implementing reforms and partly due to external support has managed to implement the roll-out of the e-GP.

The **Consultative Committee on Public Procurement** assists and advises the government in bringing further improvement to public procurement. The committee consists of a chairperson and people from both the private and public sector appointed by the government and upon the recommendations of the IMED. However, the committee members are independent and decide their own working method. Although CPTU should be guided by the Consultative Committee, the organization and current structure of the committee could not be found anywhere on CPTU's website. There is no track record of the committee's response on the current procurement system or CPTU's efforts to implement the committee's recommendations.

The other main governmental actors in public procurement are the procuring entities, by law endowed with administrative and financial power. There are about 10,000 procuring entities (units and offices under the organizations) under the 1362 public organizations in the country, of which three have significantly contributed to the transparency reform. First, the **Bangladesh Water Development Board (BWBD)** as a key procurement agency played an instrumental role in promoting transparency and setting a pioneering example of utilizing e-GP. The e-GP system was highly regarded among officials at the BWBD even in its nascent stage. Second, the **Local Government**

Engineering Department as one of the four main agencies involved in procurement has a large influence on nearly one-third of the procurement entities in Bangladesh. Its enthusiastic adoption of the e-GP system was followed by other agencies. Third, the **Roads and Highways Department** plays a pivotal role in maintaining the e-GP system as it provides feedback to the World Bank and CPTU about how to better the system.

International donors

There are a number of development partners (**DFID, USAID, Asian Development Bank**) who have an interest in public procurement reform, but the **WB** is clearly leading the cooperation. Since the early 2000s, it has forged a constructive working relationship with the government of Bangladesh and particularly IMED and CPTU, which has led to the major reform projects that have taken place. According to the WB "the government is receptive to our criticisms and proposals" - e.g. they accepted findings and recommendations from the recent WB report and asked WB to support the citizen engagement project.

Civil society, media, citizens

There are strong and credible CSO bodies in the country active in a number of areas including public procurement. Two notable actors are **Transparency International Bangladesh (TIB)** which works on overall transparency issues and the Global Partnership for Social Accountability, both of which are quite outspoken about public procurement issues. Similarly, the media is quite vocal about procurement, but not yet using procurement data. The public procurement system does not yet recognise a strong role for civil society or media in the procurement process as the legal framework does not explicitly support the participation of external parties in monitoring public procurement, weakening social accountability. There is no such organization recognized as being entitled to exercise social audits and control. Recently, TIB was invited to take part in a stakeholder committee organized by CPTU and the project managers at CPTU were perceived to be quite receptive to TIB's criticisms.

In addition, as explained above in the section on data systems setup, CPTU is piloting the involvement of citizens in contract implementation monitoring in 48 sub-districts with mostly positive results. The government has expressed its commitment to scale-up this initiative across the country. Furthermore, a citizen portal is being tested together with BRAC University, it will be fully launched for the general public in the financial year 2020.

Accountability institutions

As an independent organization with a strong legal mandate, the **Anti-Corruption Commission** can also play an important role in ensuring transparency in public procurement by launching inquiries into suspicious procurement projects. If necessary, it asks different public offices for documents on procurement processes to

ascertain whether fairness and transparency were upheld. Its capacity should be enhanced and transparency in the commission's operations should be improved. It is currently unclear how often sanctions are imposed for corruption in public procurement.

Established through the Right to Information Act 2009, the **Information Commission**, which is appointed by the president, should ensure that citizens, upon requesting information from any public office, receive that information. Additionally, public offices are required to publish some information proactively, and the commission supervises this information delivery system.

Private sector

Initially, the mix of actors involved in the reform process was quite homogenous and dominated by the World Bank and the government of Bangladesh with its key institutions working on procurement. The policy-making process was not very participatory. But the government has recently created committees to involve all stakeholders (government agencies, business forums, association, media, civil society) where they hold regular meetings.

The private sector started to get involved in the reform process through public-private stakeholder committees. It is supportive of e-GP, and although some contractors must have lost out through the reforms, they have not demonstrated open opposition.

Bidders claim that the e-GP has enabled them to access better information from procuring agencies about their projects and submit their bids without any influence or hassle from politically powerful constituents. Before the reform, non-local bidders were often not allowed to bid, there were many cases of intimidation and physical attacks on rival bidders.

Impact mechanisms

Political will

In Bangladesh the political leadership's priorities for digital development and better public spending aligned well with the priorities of the World Bank, whose resources and support enabled large-scale reforms. The reform process was top-down driven by the WB and a committed government (through IMED and CPTU) which created a powerful alliance to implement such profound changes such as the e-GP.

The Government's commitment to undertake a broad-based reform agenda on governance was set by the WB's Country Procurement Assessment Report (CPAR) 2002 as a trigger for reform. Also in the government's five-year development plans, the digitalisation of procurement was heavily emphasised because they really wanted to improve efficiency, hinder collusive practices, circumvent

the intimidation of bidders and procurement officials by musclemen and prevent threats and killings. (At the time, procurement officials sometimes hired police for security.) These arguments gave the director general of CPTU from 2010-2019 a strong mandate for reform and the reason to push it through and roll it out rapidly. The CPTU leader was remembered for his strong commitment to the e-GP reform.

Some of the key political leaders of Bangladesh have expressed their support for open contracting or open government data, including the prime minister. When introducing the new e-GP system, she is reported to have commented: "when information is open the scope for corruption gets reduced and it becomes easier to eradicate corruption, which is one of the prime targets of the government."

The World Bank has taken such an interest in Bangladesh because of the great prevalence of corruption and the extent of manipulation of tenders, aiming to digitalise the process and thus stop external interference in the procurement process. Procurement reform was (and still is) an identified priority area for governance improvement. The Public Procurement Reform Project was thus closely aligned with the Bank's assistance strategy for Bangladesh. The relationship between the WB and the government was also very collaborative which enabled the close cooperation and large financial support (in form of loans) as well as capacity support by providing WB experts. In fact, Bangladesh is the only country where the WB has provided such extensive funds for the whole process of public procurement reform from the outset of the laws, to the implementation of an e-GP and citizen engagement portal.

Capacity

The main intention of CPTU has been to develop and maintain a comprehensive e-GP system which they managed successfully thus far, however relying strongly on external help from the World Bank. In terms of technical capacity, according to the World Bank, one of the main challenges for key data-owning agencies like CPTU is the lack of technical capacity to manage the huge e-GP system and make it self-sustaining without support from the World Bank. CPTU is constrained by weak capacity in terms of legal structure, autonomy in decision making, limited staffing, and inadequate analytical and research capability. It largely depends on external experts and outsourced firms which are inadequate to regulate and monitor public procurement for more than 1300 organizations and meet the continuously increasing demand for e-GP services. In terms of oversight capacity, it is currently unclear how often sanctions are imposed for corruption in public procurement. CPTU can encourage PEs to use e-GP and can provide guidance and training

but it does not sanction non-compliance with procurement rules or corrupt acts.

Regarding the capacity of procuring entities for data entry, the majority have registered on the e-GP system. However, the procuring entities that are not registered yet are struggling owing to a lack of technical skill and adequate budget. The introduction of e-GP was accompanied by an extensive capacity building program by way of imparting direct hands-on online technical training using a mock training server. Between 2008 to 2019, an extensive capacity development program was institutionalized and has trained over 37,000 persons, mostly procurement officials and bidders. Now, there are an estimated 15,000 professionals certified on the e-GP system. The effort is ongoing under the DIMAPP project funded by the World Bank. Nevertheless, because it is not mandatory to use e-GP, many government officials are reported to still be reluctant to receive intensive ICT training on the system. Also, more training is required for small and new bidders as well as external potential data users such as media and civil society.

Recommendations

- **Civil society should get more involved in monitoring procurement. This would help to address the problem of high-value projects being captured and procurement scandals going unsanctioned.**
- **In designing the citizen engagement portal, designers should think carefully about why civil society has not become more active in this area to date and try to address this.**
- **Publish procurement data in downloadable, reusable datasets in an open data format.**
- **The government should make the e-GP legally mandatory for all procuring entities and all contracts above the minimum value threshold.**
- **The government should address infrastructural barriers, such as power shortages and low internet connectivity as well as gaps in ICT skills in order to fully utilize the e-GP infrastructure.**
- **Eliminate the need for foreign funding, as the e-GP should be able to self-sustain from the earnings generated from bidding fees, government subsidies, and other national and local resources.**

INDONESIA

Overall assessment

Indonesia has a desire to improve procurement information disclosure driven by concerns about efficiency, control and anti-corruption as well as open government commitments. This is evidenced by relevant policy, regulatory structure and institutional arrangements, though implementation is not yet complete. Compared to ten years ago, Indonesia has made great strides towards more transparent public procurement with the introduction of an e-procurement system, through which around half the country's procurement spending is conducted. This also means that there is still a large amount of procurement data that is not collected, stored, and managed by the system. There is no regulation or standard that mandates publication in open formats. Procurement data resides in each procuring entity for more than 600 national and sub-national government agencies. While this is aggregated by the procurement agency LKPP on a monthly basis on the INAPROC portal, timeliness is an issue. In addition, if we consider the fact that e-procurement is not a default procedure and paper-based procurement is still common especially for below-threshold tenders, Indonesia is far from making all procurement related information available to the public in one easily accessible space.

Open public procurement data have been rather a by-product of the reforms towards electronic systems, which also explains why the information is very fragmented across numerous portals and formats. In other words, the system was not designed with a transparency and reusability focus but with a focus on improving internal management and accountability, not necessarily facilitating external oversight and control. The full implementation of open contracting is also inhibited by confusion in public agencies around what is public information and a lack of leadership on transparency, resistance to change (as an organisational problem or because individual politicians and companies would lose out), and the lack of data proficiency of citizens to demand the right type of information.

Reform strategies used

Support from the political leadership as well as the procurement agency for reasons of improved central control for anti-corruption and the pursuit of efficiency in public procurement are the main drivers of the national-level transparency reform. These commitments were institutionalised through OGP and a common understanding of e-Procurement as the tool to achieve cleaner and more efficient public procurement was established. The legal changes of passing the Access

to Information law in 2008 and the Presidential Decrees 2010 with the amendment of 2015 enabled the roll-out of e-Procurement.

Nevertheless, the transparency reform remains piecemeal. One of the flaws of the system for data transparency is its fragmentation across procuring entities due to the federal structure of the Indonesian state. It was nevertheless designed in this way on purpose to ensure ownership by procuring entities. LKPP had to consider the fact that procuring entities across the various states would be reluctant to lose autonomy by using one central portal, thus there is a tradeoff between data fragmentation and uptake of the system. Considering the fact that non-compliance with use of e-Procurement and publication requirements is not punished, the take-up can be considered quite successful, probably partly due to the encouragement by the 2018 presidential order.

In sum, a combination of top-down pressure motivated by anti-corruption and efficiency, institutionalisation of commitments by OGP, bottom-up pressure by a few civil society groups, and the push by LKPP to design and roll out the system have led Indonesia's PP data transparency to where it stands. The existing governance structures and the lack of powerful actors to push for comprehensive data disclosure inhibits the implementation of full transparency and comprehensive, reusable data for external oversight.

Country governance context

Indonesia is a sovereign transcontinental country located mainly in Southeast Asia with more than thirteen thousand islands. It is classified as an upper-middle income country¹⁰. Indonesia is the fourth most populous country in the world with over 267 million people. According to the amended 1945 Constitution of the Republic of Indonesia, the form of the state is a unitary state with the broad principles of regional autonomy. The territory is divided into several provinces run by regional governments. Indonesia has a presidential government where the president of Indonesia is the head of state and head of government. The judicial power is executed by the Supreme Court and judicial bodies underneath. Since the political reform in 1998, the legislature has a very strong position vis-a-vis government policy as it has gained powers to conduct scrutiny and budgetary functions.

In terms of political rights, civil liberties and freedom rating

¹⁰. GNI per capita between \$3956 and \$12,235.

25 Modelling Reform Strategies for Open Contracting in Low and Middle Income Countries

including freedom of press, Indonesia ranks higher than other countries in the region, but in terms of rule of law, control of corruption and political stability, Indonesia ranks lower than its neighbours.

The procurement sector is prone to corruption. Based on data compiled by Indonesia Corruption Watch (ICW), an average of 40% of corruption cases handled by law enforcement in 2010 to 2017 related to government procurement projects. Although in many public issues political parties will oppose the government policy, in public procurement (and budget deliberation), all political parties tend to support the government. The problem of corruption in public procurement in Indonesia is not a contemporary problem but rooted in its historical political patronage. Public procurement is a mechanism for the power holder to build its patronage network to secure political support.

In Indonesia, transparency and accountability have emerged over the past decade as key to addressing both developmental failures and democratic deficits. A set of rules related to transparency and openness has been developed by the Indonesian government. Its starting

point is the basic principle of the 1945 Constitution, which states that every person has the right to communicate and obtain information.

PP profile

Public procurement in Indonesia is highly decentralized. Each government institution, both at the central and regional levels, has a special unit tasked with organizing procurement, both electronically and manually. The public procurement process in Indonesia takes 30% of the total state budget. Some argue that the LKPP's record, presiding over a deficit at US\$ 15 billion per year or almost 200 trillion rupiahs, is due to the poor procurement process ([OGP Action Plan 2018](#)).

Since 2010, the aim to establish an e-Procurement system has been part of a broader fiscal transparency program and anti-corruption strategy. Indonesia joined OGP in 2011 and from there on included commitments on e-Procurement and transparency. According to the WB (2018), around half of the country's procurement by value is spent through the use of e-Procurement.

The reform trajectory

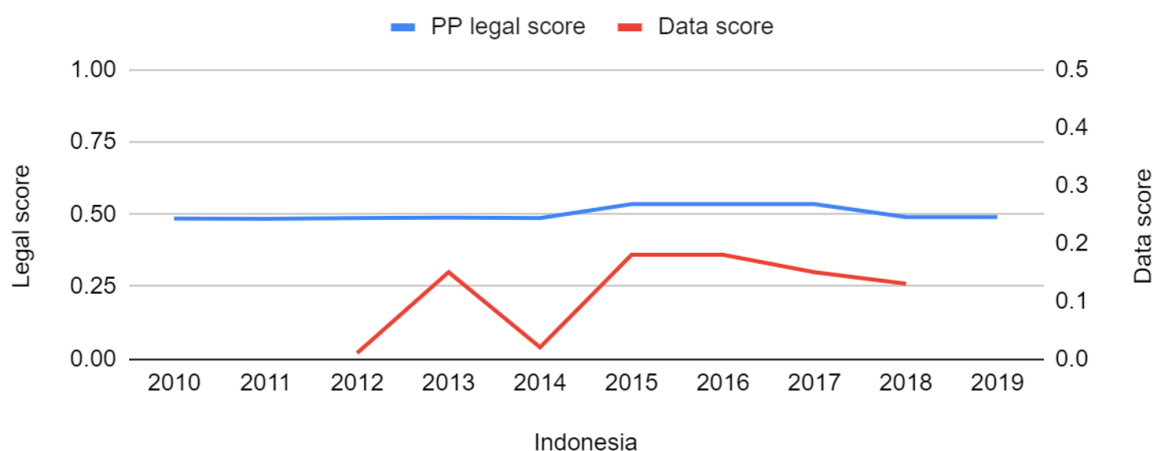


Figure 10: Development of Indonesia's legal framework pertaining to transparency in public procurement and its public procurement data availability and quality score over time based on a dataset scraped in December 2019 from INAPROC portal and the associated individual public buyer pages.

Legal framework

Indonesia's Public Information Disclosure Act came into force in 2010. It provides everyone the right to access information managed by the government. This law also requires the government to be transparent and to publish their information. It states that in the provision of public infrastructure, parties involved, including State-Owned Enterprises and private parties, are required to provide public information about the programmes being executed. Many institutions related to public infrastructure acted

on this requirement, e.g., by appointing Information and Documentation Management Unit Officers (ICW, 2018).

Regarding procurement laws, Indonesia is different from most countries in that its public procurement is regulated not by a specific law, but by Presidential Decree (PD), which throughout its existence has changed several times. After the end of the authoritarian government, since 2000, the government of Indonesia has revised public procurement regulation several times. An

important development was the shift to introducing online procurement, which also opened procurement information to the public, to replace the old manual system. Following the PD 54 of 2010, LKPP was required to develop an electronic Procurement System. Important for transparency, the Presidential Decree 4 of 2015 amended provisions regarding e-Procurement, stating that the procurement of government goods or services shall be carried out in an electronic manner (previously it said that “it can be done in an electronic manner”) and that all government entities should use the electronic system. The 2015 Amendment defined that the National Procurement Portal is the gateway of the electronic information system.

The PD Number 16 of 2018, which revoked the previous decree, stipulates that electronic procurement shall be the primary method of PP, however it is not fully mandatory and paper-based methods are also recognized. In addition, LKPP is made responsible for setting up an e-marketplace and e-Procurement system which includes all aspects of all stages of procurement. However, it does not clearly set forth rules on the accessibility of the system to the public. Transparency clauses of the law span up until the tendering phase, with post-tendering phase information completely missing from the legislative framework¹¹.

In sum, with the legal changes in 2015 and 2018, the use of e-Procurement accompanied by procurement information being displayed publicly online became increasingly required but did not clearly provide for the transparency of the digitally generated information. According to observers, government agencies have different views and opinions regarding public information disclosure, including in the public procurement sector. Many public bodies assume that procurement information, especially contract documents, are exempt information and not public to access. As a result, it is difficult for people to monitor all government projects because there is no access to procurement information (Tuturoong, 2019).

One issue that may affect the procurement transparency environment is the lack of a regulation at the legislative level. A presidential decree does not have the same weight as a law passed by the legislature. Even presidential decrees that are in the form of obligations are technically unenforceable. While LKPP, with the support of various CSOs, proposed a Procurement Bill back in 2010, the attempt has been unsuccessful in the People's Representative Assembly. Interviewees alleged that perhaps the existence of such legislation might interfere with the personal interests of the legislators, hence the less-than-supportive attitude toward the Bill. More recently, though, the Assembly is considering discussing a Procurement Bill, although it is not known whether the

contents are similar to the 2010 version.

Data mapping

Data availability and quality

Indonesia started to publish procurement data from 2012. This covers calls for tenders and contract award and signature information, but no information on modifications or cancellations as well as contract implementation and supplier performance are provided. The number of observations per year improves greatly from 2012 (7k observations) to 2016 (113k observations) and slightly lower numbers in the two years afterwards. The quality of the data as in the share of key variables available remains similar over time with the average availability of around 45%. Indonesia provides key variables, such as tender ID, and links to the original call for tender and contract award notice, as well as supplier and buyer IDs for all years.

Data system setup

In 2010, the procurement process was only known by the government and prospective contractors. The public was not aware of procurement information and the public procurement process managed by the government. Following the PD Decree 54 of 2010, LKPP was required to develop an electronic Procurement System. Currently, there are over 25 portals or applications dedicated to different phases of the public procurement process. As part of it, LKPP launched the Electronic Procurement System (SPSE) based on a free license for all government agencies in Indonesia. The data is inputted at the 689 different Electronic Procurement Services Hosts (LPSE). In practice, LPSEs have bidding rooms where people can use computers to publish tenders. LKPP deliberately decided that each office has its own system as they expected resistance from regional offices to use a central LKPP system.

Citizens can find information about existing public procurement through various online e-procurement systems for each contracting phase. Information about procurement plans is available online on the [SiRUP](#) website. Reportedly, government agencies are often late to update planning data in the system, sometimes just before they post a relevant tender. Additionally, in 2008, the LKPP created [INAPROC](#), a national procurement portal to gather the procurement possibilities around the country in one place for informational purposes. There, the public can access information on any available open tender. Each tender will have a link to a specific SPSE system that is connected to a local government or ministry. Each entity thus has their own LPSE server to run electronic procurement. Reportedly, some entities were

11. From agencies not using e-procurement methods, information is stored at each agency because the procurement was done internally. Hence, the public needs to submit a request to each agency for these kinds of data.

observed to shut down their server when they announce a procurement package, so that only connected bidders could register.

This SPSE system provides detailed information about the tender announcement and the contract award. Procurement and process data are stored in a database, while the award announcement is published in PDF or JPEG (i.e. non-open) formats. The information is not available in machine-readable formats such as CSV or JSON. It is only available electronically on the platform, so users can view information, but not interact with it. For detailed information, e.g. on specifications of a procurement, one needs to log in as a vendor. In addition, the public cannot access contract documents.

LKPP also shares its public procurement data with the CSO Indonesia Corruption Watch (ICW) which runs the opentender portal which provides risk scores for every procurement package. (Nevertheless the most updated data are to be found in INAPROC.)

These different portals are not necessarily connected to each other; furthermore, data may not be updated in real time. For example, vendors blacklisted in one region are not immediately blacklisted in other regions, and there has been at least one case where a blacklisted vendor won a contract in another region. In addition, there is no requirement for publishing information about noncompetitive procurement. Besides the multiplicity of data portals mentioned earlier, there is fragmentation in the government procurement system as a whole — electronic and non-electronic systems as well as non-integration of several ministries' procurement systems into the current SPSE. ULPs also do not have a specific data-sharing mechanism with other government agencies.

Overall, the development of data transparency in public procurement has increased. The public can see data on public procurement activities managed by the government, including procurement plans, the call for tenders, the details of the supplier of the work. However, information is not available at a single point, but rather on multiple platforms. There is a variety of different portals for different data and different stages of the procurement process. It is due to such a set-up that it is difficult to ensure completeness of the data. Currently, no single machine-readable database of national public procurement related information exists, which would be accessible to the public. In addition, if we consider the fact that e-procurement is not a default procedure and paper-based procurement is still common especially for below-threshold tenders, Indonesia is far from making all procurement related information available to the public in one easily accessible space.

Actors

Government institutions

The **Government Procurement Study Institute (LKPP)** is responsible for overseeing procurement management and implementation. LKPP is also a data collector of procurement information in all Ministries, institutions and local governments. LKPP is the main body responsible for preparation and formulation of strategies in the area of public procurement, as well as determining policy and procedure standards. LKPP is not an independent agency, since in carrying out its duties and functions it is subordinate to the State Minister of National Development Planning and is accountable directly to the President. For example, the head of LKPP is elected and dismissed by the President.

The LKPP has been highly relevant in terms of efforts to strengthen Indonesia's procurement system, both at policy and organisational level with the creation of electronic systems. However, LKPP does not have any power to enforce the existing regulations, it can only provide guidelines and standard procedures. It monitors whether the procuring entities are updating their information in the various portals and can give a warning when they observe non-compliance. They are not in a position to track implementation or performance and follow-up.

Transparency in procurement is generally high on the agenda of **sub-national governments**, but with widely varying degrees of implementation. There are regions implementing open contracting, such as the city governments of Bandung and of Surabaya and the province of West Java. These cities have started to integrate the e-procurement system with the other e-government systems, such as e-budgeting and e-payment, that allow for a comprehensive monitoring of government works. In cooperation with the WB, Bandung has implemented an OCDS compliant open contracting portal. As a result, Bandung published more than 40000 procurement records from 2015 to 2018, along with online visualizations. The former mayor of Bandung was very keen and supportive of the project.

Another example is Hivos' engagement in Bojonegoro regency on Open Contracting in Water Service Provision, where the Bojonegoro Institute has collaborated with the government to open up contracting processes. The initiative originated from the Bojonegoro government itself. Hivos has conducted an assessment for a similar project in Bantul regency. CoST is also working with a number of provincial governments roads authorities, starting with West Nusa Tenggara province which had progressive and reform-oriented governor. Furthermore, Jakarta's open data portal has now published 850 datasets from various sectors, including procurement data.

Accountability institutions

The oversight agency KPK (Corruption Eradication Commission) has a high interest in transparency in public procurement due to a large number of corruption cases related to procurement activities. Those who can enforce procurement rules include the [regional inspectorate, police, anti-corruption commission, ministries' internal auditors, external auditors](#) (e.g. the state audit agency checks suspicious entities above a certain threshold of reported corruption cases). However, they are concerned with corruption cases, not with non-compliance of transparency requirements.

Civil society, citizens, media

Some of the civil society organizations dealing with transparency in public procurement include the [Bojonegoro Institute, CoST, Indonesia Corruption Watch \(ICW\), Transparency International Indonesia \(TII\), Center of Information and Regional Studies from Semarang and The Alliance of Independent Journalists](#).

Citizen engagement in the contracting process or for monitoring purposes is not required by law. Thus, procurement activities are not required to be observed or shaped by civil society organisations weakening social accountability. LKPP has nonetheless collaborated with ICW on the opentender platform. ICW has established the public procurement monitoring platform opentender.net providing downloadable procurement data and risk scoring to be easily accessible for the public. Because of the way the system is set-up, civil society can only do investigations after the fact, they mostly play watchdog roles and advocate for more real-time transparency. TI-Indonesia is beginning to expand mostly at the local level.

Journalists generally do not have a deep understanding on this issue that prevent them to monitor the procurement. Despite the existence of those platforms, journalists still have not fully utilized the available information and data. Media coverage is currently limited to case by case issues.

In 2019, ICW and the LKPP gave a series of training to CSOs and journalists in Semarang, Bojonegoro, and Yogyakarta to read and process public procurement information in order to transform the existing data into actionable information for the citizens. Currently, the public is often unaware that they have the right to know how government funds are spent. In addition, they often do not see the value of data unless they are utilised for improvements of their livelihoods (see also Krishnamurti, 2016).

International donors

As one of the few international actors, [Hivos](#) was working on open contracting in Indonesia but the programme is ending this year (see Hivos 2019). The [WB](#) has strongly engaged with the local government of Bandung to create the sub-national transparency portal. At national level,

there is no major international actor collaborating with the Indonesian government on procurement transparency.

Private sector

Businesses have a strong interest in transparent PP and are currently the main user of procurement data. As interviews suggest, they are very supportive of increased transparency as they hope to get more access to government projects which used to be very dominated by state-owned enterprises (Pribadi, 2017).

Impact mechanisms

Political will

Internal pressure

Indonesia has pursued a continuous reform agenda throughout the last decade, with open government as one of its key priorities. For over 10 years, public procurement has a priority in the national strategy on corruption prevention and eradication. According to interview findings, the initial idea behind the shift to online procurement was to limit direct interaction between parties to avoid collusion. The government has suggested that the use of information technology will prevent misuses of the system and improve accountability. LKPP has therefore developed the e-procurement system, which they argue can minimise potential fraud and corruption. They have also developed complaint mechanisms for the public and whistleblower protection for internal use. The central government has also applied to the CoST Initiative (Infrastructure Transparency Initiative) underlining its interest in transparent public procurement.

In addition, Indonesia's political leaders have shown much interest in making procurement processes more efficient to stimulate economic growth. With a goal of expediting the government procurement process through the use of information technology a number of legal changes have taken place, including mandating procuring entities to use the e-procurement system. Even though the reforms did not follow a clear disclosure objective, but rather to improve and simplify the process, the LKPP has shown goodwill in terms of institutional support for data transparency and cooperation by sharing its data with Indonesia Corruption Watch to create the [www.opentender.net](#) website. LKPP was identified as one of the main driving institutions of reform - despite not having the mandate to enforce the rules.

Nevertheless, interview findings have indicated that the failure to use e-Procurement and disclose information is caused, not primarily by a lack of technological skills or infrastructure, but by the lack of political will to be completely transparent. As TII put it: "The government is an arena where all interests will contest and be accommodated. On the one hand, the government

reforms PP to create effective and efficient procurement by implementing international standards and new technology. On the other hand, the government must accommodate the interest of politicians and contractors. Transparency reform in public procurement is often a threat to corrupt officials. To realize it must deal with those who have power, political parties and money." In other words, there are potentially powerful groups which would be affected by a full-fledged procurement transparency reform, such as black companies that have been sheltering in political parties. In other words, transparency is sometimes perceived as a threat, also because it can make the procurement process more vulnerable since one grievance complaint can bring any process to a halt.

External pressure

OGP is the first main external influence that pushed the transparency of Indonesia's procurement system. In 2011, Indonesia's OGP Action Plan already included an e-Procurement commitment. In 2014, they committed to accelerating open and good governance practices in goods and services procurement which was deemed completed by the OGP review. In the latest National Action Plan (2018), one of the commitments is Open Contracting implemented by the (LKPP) and the Information Commission. Reportedly, the OGP Action Plans enjoyed high-level political support in Indonesia, at least regarding making the commitments. The evaluation of implementation is still pending review. Besides, CSOs, media and international donors have been active to pressure the government to be transparent in public procurement. They also encouraged the government to open procurement contract documents.

Depending on the agency, there are leaders who are less concerned with procurement information. There is a lack of supervision and communication, so subordinates are less motivated or not well instructed to comply with disclosure requirements of procurement information. The absence of clear targets and timetables related to the process for updating public information and the absence of reporting standards contribute to this.

The government provides support for procurement officers for the training to obtain a certificate from LKPP. The regulation stipulates that public procurement must be managed by certified government officers. Sometimes, LKPP also conducts training to improve capacity, but there is a need to strengthen their capacity to accelerate procurement transparency.

Capacity

In terms of technical capacity, the e-procurement system relies on 689 e-service hosts across the country and their connectivity with the central procurement database. Insufficient and expensive internet access due to limited information technology infrastructure remains a major obstacle to the implementation of transparent e-procurement. In many areas in the country, internet access is still a luxury. E-procurement requires sufficient bandwidth due to the process of uploading documents which can often be several megabytes. Therefore, there is a high risk of bidding files being not completely uploaded into the e-procurement system due to low internet capacity. This results in bids being excluded due to incomplete provision of documents.

In terms of organizational capacity, it was mentioned that push-back to the reform came from line ministries, due to a resistance to change. In addition, there is confusion in public agencies around what is public information and what is not, there is no clear understanding of transparency and what constitutes open information.

Recommendations

- On the national level, the Indonesian legislature should pass a unified procurement law (instead of a presidential regulation). This law should clearly define what information related to public procurement has to be made available to the public, how the information and documentation system should be managed (ideally guaranteeing access to information in machine-readable formats), how the information should be delivered in a more proactive manner. It has been under discussion but is currently not a priority. It is important to properly map legislators, find champions in government and tailor messages to each actor, to make reform beneficial for them (e.g. to raise their image and help political career).
- LKPP should explore how to publish contracting information in bulk. A number of key fields are available as structured data within SPSE, and a number of key documents are held within procurement systems, but not all are publicly available. The existence of a MoU for data sharing between LKPP and ICW reveals that the technical basis for contracting data sharing is in place.
- In the absence of an effective nation-wide data collection system and (legal) control mechanisms, a focus on provincial initiatives could foster the spread of open contracting across Indonesia. Similar to the approaches of CoST and Hivos, one sub-national initiative can learn from another and be rolled out gradually agency by agency across provincial governments.
- Seek to create a culture of competition among provincial governments on their state and progress of openness. One approach would be to begin engaging with those provinces or regencies that are run by reform-minded governors and strong local information commissions (as was the case is Sumarang, for example) in order to inspire and foster the political will in other regions.
- Indonesia publishes a national transparency ranking of provinces, one indicator of which is transparency in procurement. Political leaders might be interested to improve their ranking by opening procurement, which might be an entry point for civil society cooperation with governments.
- Ensure that systems, websites and portals for information disclosure specifically cater to the needs of the citizen by being easy to navigate and use. Focus on developing institutional and human resource capacity to use data.

KENYA

Overall assessment

In summary, legislation is ahead of practice when it comes to open contracting in Kenya. Nevertheless, the PPRA has recently improved its data publication on the PPIP but only a fraction of procurement processes is represented and it is not integrated with the IFMIS which holds much more digital procurement information.

This reform trajectory can be explained by **a mix of societal, internal governmental, and external drivers, including public demand for accountability, savings concerns on the part of National treasury, and genuine transparency concerns on the part of PPRA** - laid down in OGP commitments. Their efforts receive feedback from civil society (e.g. criticizing the information available on the portal) and are supported by a few external actors such as OCP and the World Bank. On the other hand, the PPRA lacks capacity to implement the desired reforms, partly due to internal constraints (which is where external support can come in) and partly because it depends on PEs reporting discipline which it cannot enforce or sanction.

Reform strategies used

The legal reforms, supported by public demand and saving concerns, have been driving the publication of procurement information in the last 5 years. Remarkably, the Executive Order of 2018 and Treasury's Directive of 2020 had more power in enforcing data disclosure than the PPAD law (even though in the legal hierarchy they are less binding).

Hivos recounted its advocacy approach for putting OC on the agenda of policy-makers. They put emphasis on the human aspect of advocacy and the necessity to build trust with individuals by acknowledging their working realities and understanding their backgrounds. In addition, the PPRA's capacity constraints seem to pose an opportunity for opening up cooperation, such as OCP has begun.

Country governance context

The Republic of Kenya, located on the East African coast with the Indian Ocean, became independent from Great Britain in 1963. The colonial rulers fostered the country's industrial development which subsequent Kenyan governments built upon by promoting rapid economic growth through public and foreign investments and agricultural production. Nowadays, Kenya has a market-based economy that is generally perceived to

be investment-friendly following a number of regulatory reforms in recent years. As the most advanced economy in eastern Africa, It is classified as a lower middle-income country¹².

Kenya also inherited and maintained a highly centralized government, secretive bureaucracy, and public service. The politics of Kenya take place in a framework of a presidential representative democratic republic, whereby the President of Kenya is both head of state and head of government, and there is a multi-party system. In practice, there are two main political parties that serve as vehicles to carry certain long-term leaders, illustrated by the currently incumbent president Uhuru Kenyatta with the Jubilee Party, and his opponent Raila Odinga with the Orange Democratic Movement. A key feature of Kenyan politics is the prominence of land distribution conflicts and clashes of interest groups along ethnic lines. Cronyism is a common phenomenon in Kenyan politics and political interests are closely intertwined with economic ones (Musoga, 2016).

PP profile

In Kenya, procurement expenditure amounts to around 26% of GDP (World Bank, 2018c). The procurement system is decentralized, with each procuring entity conducting procurement procedures separately, using standardized tender documentation. The system is currently a hybrid between electronic and paper-based procedures with the law allowing both, even though recent orders from National Treasury (National Treasury) have given emphasis to electronic procedures. An electronic system (IFMIS) is in place that enables some of the functions of e-Procurement and its expansion into a full-fledged e-GP is currently under development. However, the IFMIS is not accessible to the public, only to registered suppliers and procuring entities. Separately, the Public procurement regulatory authority (PPRA) has launched a transparency portal PPIP into which procuring entities submit data. This publishes information on calls for tender and contract awards and there have been notable increases in volumes published since 2018.

12. GNI per capita between \$1,006 and \$3,955

The reform trajectory

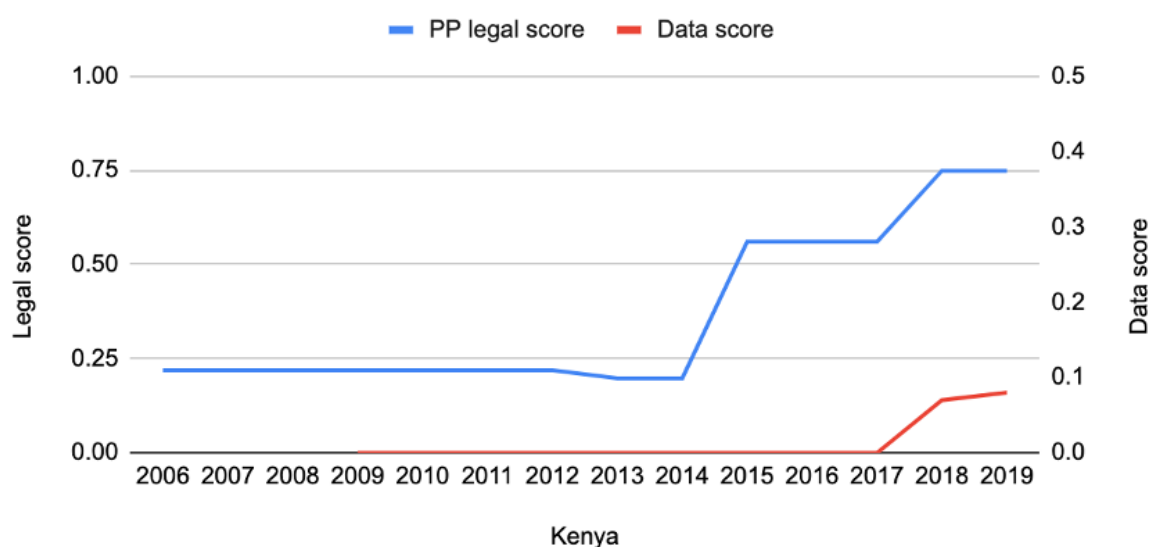


Figure 11: Development of Kenya's legal framework pertaining to transparency in public procurement and its public procurement data availability and quality score over time based on the data scraped from the Kenyan Public Procurement Information Portal in May 2020.

Legal framework

In 2005, the first Public Procurement and Disposal Act (PPDA) was enacted followed by the Public Procurement and Disposal Regulations (PPDR) in 2006. In August 2010, Kenya promulgated a new constitution which seeks to foster good governance, transparency, and accountability at different levels. It required a new procurement act, which, following a process of review, took shape as the Public Procurement and Assets Disposal Act (PPADA) of 2015 and the subsequent Public Procurement and Disposal Regulations (2020).

Some of the changes included rebranding the procurement authority into a regulatory body (PPRA), eliminating the tender committees, which were widely perceived to be sources of corruption, and making the accounting officer liable for his professional advice. The PPAD provides that ICT may be used in procurement with respect to publication of notices, submission and opening of tenders, and tender evaluation. Electronic procurement is offered as one option among many. In terms of transparency, the PPADA requires procuring entities to publicly display the invitation to tender in the dedicated PPRA tenders portal or the entity's website. The release of information related to the planning or implementation of public contracts on the PPRA platform is not provided for (IDFI, 2018; own legal mapping).

The Access to Information Law passed in 2016 constituted another important development for public transparency. It was designed to provide clearer guidance on what information public entities must proactively publish

including contracting information. The laws explicitly support citizen participation in governance, especially in service delivery and public financial management.

In June 2018, the President signed the Executive Order No. 2 requiring all procuring entities to publish procurement information (including detailed information about the awarded bidder, including its directors and owners, description of the subject of procurement, members of the Evaluation and Inspection Committees) on the public procurement platforms, and obligating the National Treasury to ensure that all procurement is undertaken through e-Procurement module by January 2019. The National Treasury already runs an e-procurement system, however, it is part of the Integrated Financial Management System that is currently accessible only for registered suppliers and not to outside observers.

In terms of implementation, the data mapping and interview evidence reveal that a lot of information that should be proactively disclosed by law is not being published. The National Treasury can in theory fine PEs that don't comply with the rules but this rarely happens. Instead, they issue Directives, such as in February 2020, reminding and obliging all Ministries to update their data on PPIP.

Data mapping

Data availability and quality

The data used for assessment was scraped in May 2020

from the Kenyan Public Procurement Information Portal (PPIP). The collected dataset shows that the publication of procurement information only started to accelerate in 2018, while for previous years only a few hundred processes were recorded. In 2018 and 2019, the number of observations rises to 11,000 and 14,000 respectively which represents around 20-27% of all procurement. The share of key variables available amounts to around 33%. The data cover calls for tenders and contract award information as well as partial information on contract signature, but no information on modifications or cancellations as well as contract implementation and supplier performance are provided. PPIP publishes tender IDs and bidder IDs for the years 2018 and 2019. The data is not yet provided in a downloadable or analysable format although PPRA has declared the intention to transform the data to OCDS.

Data systems setup

Already in 2008, the predecessor agency of PPRA launched a tender portal intended to be a database for tender advertisement and contract awards worth more than five million Kenyan Shilling. It did not receive much attention in subsequent years as it was not used much to publish information.

In August 2010, the government introduced what it called e-procurement with the launch of the Integrated Finance Management and Information System (IFMIS), which integrates key functions of procurement for tender management but also allows for offline and manually fed processes. At the time, it displayed some information, such as procuring entities, contract awards and the sums, and start and completion dates. However, currently the digitally recorded information from IFMIS is not displayed to the public, access is only given to registered suppliers and procuring entities and not to outside observers. National Treasury is currently discussing the setup of a separate, full-fledged e-GP, which said to be under development given the agreed support of the World Bank. At this stage, it is unclear whether the e-GP will open up procurement information to the public.

Large-scale PFM reform programmes implemented by the Kenyan government and informed by international donors in 2017-18 put e-Procurement and open contracting back on the political agenda. When the Executive Order No.2 of 2018 was passed, PPRA was compelled to improve the Public procurement information portal (PPIP) where procuring entities are now required to upload tender notices and results each month. The portal received another upgrade in December 2019 which improved data publication significantly, as the [comparative portal mapping by ICJ](#) shows (ICJ, 2020). In 2018, most procurement information on the portal was found to be mostly historical, and only disclosing very limited information without supporting documentation. In comparison, in 2020, the portal has improved in several

dimensions. The tenders published also contain the corresponding tender documents. Data on losing bidders and company directors is disclosed. Nevertheless, some areas were still found to be incomplete, e.g. the portal contains sections for evaluation and inspection information but those fields are always empty. In addition, the comparison between the date information was published and the dates for key procurement information showed that most of the published data had been disclosed late. Currently, PPRA is in the process of transforming PPIP data into OCDS.

In terms of system integration, the PPIP is not linked to IFMIS, meaning that procuring entities have to separately upload on the PPIP or sometimes manually gather the data and pass it on to PPRA for publication.

One sub-national procurement system worth mentioning here is the case of [Makueni County's Open Contracting Portal](#). In 2019, the Makueni County Government launched a [portal](#) with procurement information for all stages of procurement processes at the county level. In a nutshell, the progressive county governor drove this initiative with a strong reform- and IT-minded approach. Hivos and Development Gateway provided the necessary resources and technical support. The county government closely involved POs as well as civil society and the public at large in the reform process, which is hailed as a success story that might inspire other sub-national reforms (de Toma, 2019).

Actors

Government institutions

The main institutions responsible for public procurement in Kenya are the National Treasury, the Public Procurement Regulatory Authority (PPRA), and the Public Procurement Administrative Review Board. The [National Treasury](#) is the primary institution responsible for the formulation of policy on public procurement. Any policies developed apply to both national and county governments. One of its most critical functions is the design of efficient procurement management systems to ensure transparent procurement. The [Public Procurement Administrative Review Board](#) is an independent body that ensures all procuring entities observe laws that relate to an open tender system in the public sector. [PPRA](#) is the primary institution to oversee public procurement procedures, it is responsible for ensuring that PEs comply with procurement procedures, monitoring the procurement system, initiating policy, and implementing the operation of the public procurement system. Interviews suggest that the PPRA has been reluctant to partner with external (civil society) organisations but has recently begun to open up to actors such as OCP in order to enhance its capacity.

Accountability institutions

Crucial institutions that support a transparent public procurement system include the **Ethics and Anti-Corruption Commission** and the **Office of the Auditor General**. Both have highlighted violations of public procurement laws and regulations in a number of their reports. On average, the Commission receives between 4,000 and 5,000 complaints per year out of which 6% involves public procurement irregularities which the Commission investigates with the ability to recommend prosecution as necessary (Kagume & Wamalwa, 2020).

Civil society, citizens, media

Important CSOs working on open contracting include: **TI-Kenya**, **International Budget Partnership**, and the **International Commission of Jurists**, all of which have been very vocal and proactive in seeking procurement information and promoting its transparency.

Citizens, while having a strong sense of social accountability and being outraged about the pervasive political corruption in the country and the loss of public funds, often have little understanding of the legal frameworks on procurement and the various institutions mandated with its implementation and oversight. They are rather seen to care about the efficient use of public funds to ensure the right prioritisation and implementation of projects in their area of livelihood. Public entities and state corporations are mandated under their service charters to promote citizen participation as one of their key performance indicators. However, in practice public entities have not developed specific guidelines on citizen engagement with regard to open contracting and there are currently no known citizen initiatives for contract monitoring.

The media in Kenya responds effectively to scandals and sensationalist forms of public action, and are less engaged in following up the details which might be due to a lack of understanding of public procurement. Hivos has started to counter this by partnering with national media to generate stories on an OC platform.

International actors

There are a number of international actors promoting good governance in Kenya. On the specific issue of open contracting, **Hivos** has been one of the most active partners, working on putting open contracting on the agenda in 2016-18 and supporting the Makueni county project. **Development Gateway** was a key partner in this project and is currently rolling out similar initiatives in other counties. The **World Bank** has advised the government on procurement policy reforms and assessed the IFMIS as well as providing support for the e-GP currently under discussion. **OCP** is currently working with PPRA to adopt the OCDS.

Private sector

While not being very outspoken on the issue of open contracting (except for the telecommunications company **Safaricom** which is a strong advocate of open contracting), the private sector is considered one of the main beneficiaries of a more transparent procurement system. A few key actors include the **Kenyan association of manufacturers**, **Kenya private sector alliance**, and the **African procurement platform** which helps companies to find suitable tenders. The DFID-supported Business Integrity Initiative has undertaken useful surveys of key problems facing the business sector and begun to build a forum of local businesses interested in effecting change.

Impact mechanisms

Political will

Over the last decade, President Uhuru Kenyatta has shown commitment to fighting corruption and formed a task force to review the legal, policy, and institutional framework for anti-corruption. Observers criticise the lack of effective action resulting from this, although recently government officials, such as the previous cabinet secretary have been arrested and charged with corruption offenses related to procurement issues.

Given long-standing and forceful public demands for public sector accountability, outrage about public procurement scandals triggered numerous PFM reforms in the last five years, including public procurement. The PPAD Act, the 2018 Executive Order and the 2020 Directive are all proof of an existing political will to gather and publish better procurement data. According to interviews, the reforms are also driven by savings concerns as the amounts of funds lost through inefficient and obscure procurement became overwhelming and potentially threatening for the president's legacy. At the same time, Kenya is heavily indebted and has a very constrained budget in recent years. It was commented that at National Treasury, there is a lot of goodwill in terms of improving efficiency, giving technical support to PEs, whereas the focus is not on ensuring external transparency as a goal in itself.

In addition, the government committed to implementing OCDS on the PPIP, which was captured by its latest **OGP National Action Plan**. Reportedly, Kenya's engagement with OGP began in 2016, following the London Anti-Corruption Summit, but in subsequent years the government has been less engaged or even claimed to be unaware of the commitment (National Treasury was the lead agency in this case). Nevertheless, PPRA is actively working with OCP on transforming its data into OCDS. The agency appears to increasingly open up to cooperation with external partners such as civil society that can provide feedback and support them to achieve their goals.

Capacity

PPRA has improved the delivery of procurement information by upgrading PPIP and is currently in the process of standardizing its data. The implementation of OCDS relies on help from OCP, as PPRA does not have the in-house capacity for the data transformation. In addition, it does not have capacity for data analysis which could be useful for monitoring and evaluation. This is linked to the agency's constraints in human and financial resources. Another institutional factor relevant for reform is PPRA's leadership, which has been missing for some time as there was no appointed Director General.

Public entities are facing a number of capacity constraints for implementing transparency in procurement. First is poor record management as few public entities have

designated records management officers which leads to difficulty in tracking individual procurements. Records of procurement transactions in many cases are inaccurate or incomplete or absent, which lead to suspicions of dishonest dealings at the tender boards. Second, many POs lack knowledge and training in procurement. Various studies have identified a general lack of information about the legal framework, principles, procedures, and processes of procurement by procurement staff in public entities. Third, ICT skills set among civil servants within data-owning agencies are wanting which slows down or even hinders the process of online data publication.

Recommendations

- In the currently ongoing discussions on the shift to a full-fledged e-GP, the government should consider opening up the data currently recorded in IFMIS, e.g. by connecting it with the PPIP through an API.
- The legislature should embed the principles of OC in the national legal framework and move the provisions of the Executive Order No. 2 2018 to become legislation in an amendment of the PPDA.
- PPRA's capacity and budget constraints have recently emerged as a window of opportunity for opening up the agency to cooperation with external actors. Civil society could try to engage them by offering to fill their capacity gaps around data systems, IT skills, monitoring and evaluation etc. This could help to cement a relationship for future engagement and build trust for a co-beneficial instead of a combative relationship.
- At the same time, the case of Makueni county reveals that strong political leadership with the will for OC goes a long way to implement reforms, even in the initial absence of capacities. One approach could thus be to identify other such champions on sub-national level, i.e. governors with an openness towards transparency reforms, a wish to leave an open government legacy or to polish their image as a clean county, for example. One county can inspire others, which can then again exert pressure on the national level to keep up in terms of transparency.

NEPAL

Overall assessment

As a result of a shift in governance and donor demands, the government of Nepal has made some progress in opening up public contracting. It has shown political will to improve transparency as evidenced by the legal framework and the introduction of the e-GP system and PPIP. However, the implementation of disclosing procurement information in a structured and analysable format is still largely missing. This disconnect between apparent political will and tangible improvements to the legislative and institutional framework on the one hand and the fundamental shortcomings of transparency outcomes such as largely empty public databases on the other hand, is difficult to explain. Certainly, capacity constraints at the PPMO and in PEs have played a central role. Moreover, political will may be circumscribed by powerful interests which oppose tangible reforms which go beyond ineffectual legislative and underfunded institutional reforms.

Reform strategies used

The **drivers** that have shaped procurement reforms towards opening up contracting information in Nepal include an overall shift in the **internal governmental demand towards openness, donor demand and support, and the strong advocacy of the civic tech company Young Innovations and OCP**. The latter two worked hard to convince PPMO of the value of open contracting for their own benefit of analytics and efficiency gains. Their advocacy strategies included mapping the data and demonstrating a pilot portal (similar to Budeshi in Nigeria), engaging repeatedly personally with a diversity of individuals across PPMO departments, and clarifying the legal situation to prove that disclosing procurement information would not have any legal ramifications.

Success factors impacting the sub-national Dhangadhi open contracting initiative include the strong leadership from the mayor, the change of the municipality law in favour of disclosure, the continuous involvement of stakeholders in the procuring entities, businesses as well as civil groups.

Country governance context

Nepal is a landlocked country in South Asia located between India and China. Nepal has a federal structure, with a national government, 7 provincial governments, and 753 local governments. It is classified as a low income country¹³. Since the abolition of the monarchy

[date?], Nepal has become a federal republic, which was an enormous shift in the governance system, and the Constituent Assembly has had two elections since its formation in 2008.

In 2015, Nepal was shattered by a devastating earthquake and its aftershocks, the reconstruction efforts cost the government US\$ 1.3 billion for reconstruction and rebuilding in the fiscal year 2016/2017. Despite this adverse context, Nepal has been praised for its developmental progress and is expected to graduate from Least Developed Country status in the next few years.

PP Profile

Public procurement consumes approximately 11% of the national GDP (2017). Around half of public procurement expenditure is financed from international donor funds (World Bank, 2018d).

13. GNI per capita of \$1,005 or less

Reform trajectory

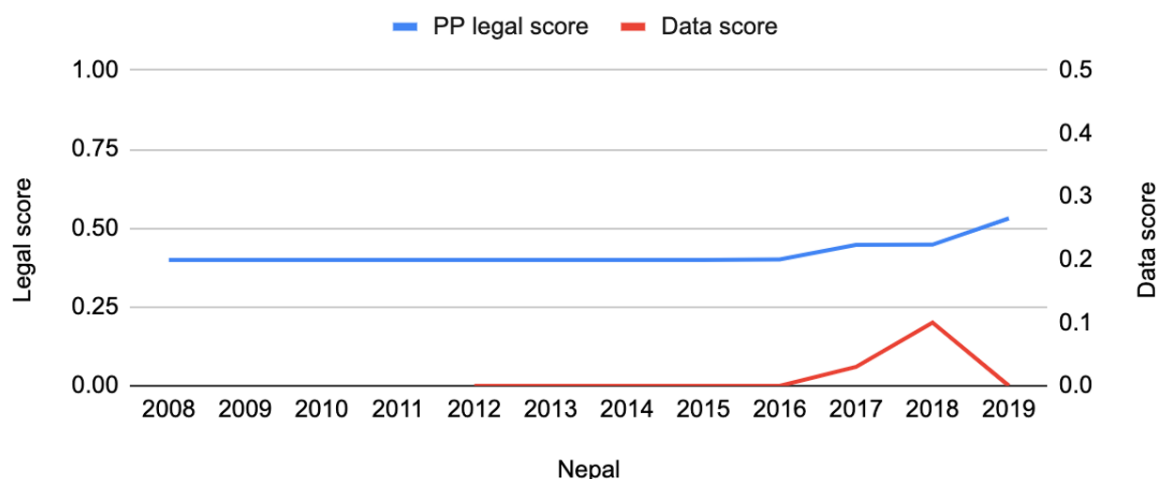


Figure 12: Development of Nepal's legal framework pertaining to transparency in public procurement and its public procurement data availability and quality score over time based on the data downloaded in March 2020 from the Public Procurement Transparency Initiative Portal.

Legal framework

Prior to 2007, efforts had been made to systematize procurement affairs through international support. A collaboration between the World Bank and the government of Nepal recommended that the government develop a new Public Procurement Act based on the United Nations Commission on International Trade Law (UNCITRAL) Model Procurement Law and that it also create an independent procurement agency. This led to the enactment of the Public Procurement Act in 2007 (and the Public Procurement Rules 2009) and the establishment of the PPMO as an oversight body established with the vision to ensure good governance in government procurement which provided the starting point for continuous reforms.

The Public Procurement Act 2007 was the first legal framework aimed to make all procedures, processes, and decisions relating to public procurement transparent, competitive, and fair, with a concern to value for money. It already envisaged the use of electronic communications for public procurement transactions. The law authorizes the PPMO to adopt technologies to manage and regulate procurement activities. The Public Procurement Rules 2008 even required the PPMO to establish, operate, and manage a single portal for the electronic procurement system (2010 amendment). Furthermore, the Public Procurement Act 2007 allows agencies to release procurement contract information on their own websites. Since 2011, if an agency does not have its own website, it is required to publish data on the PPMO's electronic procurement portal.

Until 2017, the legal instruments regulating public procurement did not specifically indicate the requirements of data disclosure related to every stage of procurement. Procuring entities are only obliged to disclose data related to invitations for bidding. This changed in 2017 with an amendment legislating that the procuring entities shall notify contract completion on their website or PPMO's website. In addition, in 2018 PPMO got the right to republish and redistribute PP data. In 2019, the data collection was legally centralised by an amendment to the act stating the procuring entities shall publish procurement records through the e-Procurement system, which PPMO was tasked to operate by the same amendment.

In terms of enforcement, PPMO reserves the authority to monitor and supervise compliance with the PPA 2007.

Data mapping

Data availability and quality

The dataset used for assessment was downloaded in March 2020 from the Public Procurement Transparency Initiative Portal (PPIP). It provides structured JSON and Excel datasets, however at the time of research, the only files containing data on the portal covered the years 2017 and 2018 and contained around 4000 procurement processes. The share of key variables available amounts to around 29% on average. It covers the procurement planning information as well as call for tenders and the

awarded contract value, but misses information on the awarded bidder, contract signature, modifications, and implementation. It provides important identifiers such as Tender ID, but no organisational IDs for suppliers or buyers, only the buyer name is given. Despite such a small scope, the data is provided in machine-readable and downloadable format.

Data systems setup

After its creation in 2007, the main problem PPMO faced was the existence of individual e-submission systems (GEPSON systems) that scattered procurement information and fragmented bidding opportunities. In order to centralize and unify the system, it developed an e-GP system with the help of the WB and Asian Development Bank and other development partners.

The first iteration of the e-GP system aimed to regulate the procurement activities of all the public entities through a single portal operated by the PPMO. Through this system, public entities could publish tender notices and other associated bidding requirements as well as bidding forms. Individual bidders can submit their bids from the platform. After the Government approved its rollout in 2016, the **e-GP system II** was launched (Bista & Bista, 2016). It takes it a step further by enabling public entities and bidders to carry out the entire public procurement process online including contract awarding and contract implementation. It is reported that there are still many agencies not registered in e-GP, the official number of Active Public Entities on the platform is 3014 (5th August 2020). Currently, the e-GP does not provide the data in an analysable, downloadable format.

In an attempt to promote open contracting, PPMO has partnered with the civic tech company Young Innovations (YI) and the global NGO OCP to develop the procurement transparency portal **PPIP**. OCP and YI strongly advocated for this portal and first mapped the data against OCDS and developed a pilot version to demonstrate its use to PPMO. When PPMO agreed, it tried to ensure that the data is transferred from the e-GP to PPIP through an API. The portal is thus entirely based on the data available in the e-GP system. The full launch of the portal has repeatedly been delayed - the explanation being that the e-GP has changed its maintenance contract to a new service provider which has stopped providing data to PPIP and requires fixing of the API, which explains the decline of the data score in 2019.

One **sub-national open contracting data system** worth mentioning is the Infrastructure Management System (**IMS**) of **Dhangadhi Sub-Metropolitan City**. The IMS is an open contracting platform specially developed to facilitate locally elected representatives to track progresses of infrastructure projects. It uses the OCDS and offers

Excel and JSON downloads of the datasets¹⁴. Likewise, the system also enables feedback on the projects from citizens as well as other stakeholders on a real-time basis.

The system was born from the initiative of the mayor and his efforts to increase oversight and efficiency in public infrastructure delivery. As all infrastructure projects, often overseen by user committees made up of citizens, need to be approved by the municipality which already used an internal accounting system, he wanted to digitize the whole process to allow for monitoring from the beginning to the end of a project. The municipality imported data from the existing internal accounting system and worked with user committees and the engineering department and made it compulsory to enter infrastructure procurement related information on the IMS system by passing a guideline endorsed in the municipality law. First, they published planning and contracting data, then engineers provided feedback on the implementation of a project and the accounting department added to it. The deputy mayor formed a monitoring committee to oversee the process. The public can observe the real-time data on a mobile app or the website and send in feedback as well. Reportedly, this has increased trust of citizens towards the municipality government, which is currently working on a campaign to involve CSOs and create training programs on the IMS. In sum, the key motivation in creating the IMS was to increase oversight and efficiency in public infrastructure delivery which has in turn also led to improved transparency.

Actors

Government Institutions

Three key government institutions have an interest in and impact on transparency reforms in public procurement. The **Ministry of Finance (MoF)** is a key agency responsible for the allocation of resources, better management of public expenditures, and is responsible for public finance policy-making. In recent years, the ministry has introduced and established the e-GP system for public agencies to carry out their procurement activities.

The **Public Procurement Monitoring Office (PPMO)** is a subordinate entity under the **Office of the Prime Minister**, which performs the executive functions of the state and is chaired by the prime minister of Nepal. The PPMO is the agency primarily responsible for monitoring the public procurement law implementation. Being a dedicated agency for public procurement, the PPMO is authorized to collect the statistics of procurement proceedings by public entities for the purpose of technical auditing and to republish it. Nevertheless, strong advocacy from external actors was required to convince PPMO to open the data

14. The assessment of this data was outside of the scope of this study and is thus not evaluated.

on the PPIP (see political will).

Oversight institutions

The **Office of the Auditor General** is a constitutional body authorized to conduct the auditing of every government agency and hence ensures that all financial activities have been carried out as prescribed by law. The office also performs the role of a watchdog, investigating any financial irregularities in government institutions.

International donors/organizations

Since 2012, the **Asian Development Bank (ADB)** and other development partners (**DFID, EU**) have supported the Government of Nepal to strengthen its public management. The program has been executed by the MoF with concrete targets on improvements in the public procurement system. The **WB** and ADB have also supported the development of the e-GP system (ADB, 2016).

OCP has engaged PPMO to partner on the creation of the PPIP and acted as a strong advocate for open contracting. Besides, the **Canadian Development Agency CECI**, established the program **SUSASAN** (Sustainable use of Technology for Public Sector Accountability in Nepa) which focuses mostly on the demand side of open data and has started to ask local governments to adopt OCDS. It was mentioned in interviews that the various international actors do not concert their efforts to more effectively push for transparency.

Civil society, citizens, media

The civil society sphere working on social accountability generally and open contracting specifically is still emerging in Nepal. The few active organizations include **TI-Nepal** working on open contracting in the health sector, **Freedom Forum** promoting access to information rights and working with the International Budget Partnership, as well as the **Good Governance Foundation** and a number of local CSOs at the district level. Generally, civil society has the constitutional freedom to work on issues such as government transparency, but in practice regulators have attempted to curtail its freedoms in the past, e.g. by requiring that one CSO can only work on one theme in one province (Freedom Forum, 2018).

Regarding the sense of social accountability across the general public, a study on what kinds of **public** information is perceived as useful by citizens found that public procurement scores very low (SUSASAN, 2018). There is a lack of awareness of the impact of procurement on society. Furthermore, during the creation of PPIP, YI and OCP tested some users from civil society and journalists, who were found to perceive procurement as a very complex process. It was hard for them to understand and manipulate data. To counter this, YI and OCP have organized a data hackathon with university students.

Media are playing an important role in promoting

transparency and accountability, creating space for public debate and making people aware of situations and developing opinions - there is an active investigative journalism in local and national media across Nepal.

Private sector

The private sector is interested in the business analytics that they can use for their interest, however there is not much debate on it thus far.

Impact mechanisms

Political will

The political will for open contracting in Nepal has been influenced by a number of factors. First, Nepal's transition to a federal republic with parliamentary elections has shifted government priorities towards increased accountability, also frequently emphasized by international donors. Since the country's decentralization and the creation of a federal structure in the last decade as well as the first elections in nearly twenty years (in 2017) which brought thousands of new representatives into elected seats, Nepal has put in place new measures to support accountability.

Second, following the earthquake in 2015, there was an increasing inflow of donor finance which came with donor requirements for transparency and accountability. Since 2015, Nepal has been considering joining OGP; the former Information Commissioner was very outspoken on the transparency agenda. Other key political leaders of Nepal express their support toward open government, along with the adoption of technology in opening data.

In public procurement, the passing of the legal framework and its various amendments and the establishment of the PPMO show the backing of procurement reforms and transparency requirements and have laid the foundation for transparency reform. With the development of the e-GP system, it became clear to the government that it should be open to the public - driven by donor demands as well as a general move towards open government across the board. On 14 April 2016, Prime Minister K.P. Sharma Oli inaugurated the e-GP system, and stated that it was essential to making economic activities transparent, adding that this is a newly established practice in the country.

Taking this a level further, external actors like YI and OCP came in and raised awareness at PPMO about open contracting and its benefits. Formerly, PPMO had thought of electronic procurement as a digital business process, not as a tool for transparency or analytics. The advocates highlighted that it does not just serve transparency but is a means to improve procurement efficiency. The process of creating political will at the level of PPMO leadership was a tedious one as the leadership changed frequently and needed to be convinced again and again, with seven

or eight different heads in the last 4-5 years. PPMO was perceived to be very risk-averse and hesitant to data publication, since the legal framework did not define the publication process in detail. Nevertheless, following YI's pilot portal, PPMO agreed to develop the PPIP and was supported by MoF. It remains to be seen whether its current technical difficulties will be cleared in order to fully launch the portal.

The issue highlighted here is that political will for transparency also hinges on the institutional culture and individual leadership. In Nepal, there is no institutional culture of openness, therefore embarking on an open contracting project is perceived to be a very new and potentially risky endeavour that requires a dedicated open-minded leader.

Capacity

In terms of institutional capacity, the aforementioned frequent changes in PPMO's leadership weakened the organisation and made it harder to engage with it in transparency reform.

In terms of data disclosure, one challenge stems from the legal setup that does not clearly define provisions of what should be published when and where. This goes hand in hand with the capacity of procuring officers and the noted legalistic culture of public service. In other words, POs do not have an incentive or feel an obligation to publish information when it is not clearly required by the law.

Regarding technical capacity, at the level of government agencies there are clear deficits, with some, usually the smaller ones, not having enough computers or lacking the required IT skills. PPMO is providing training on the e-GP system supported by WB funding.

On the demand side of the data, there is a lack of proficient user groups that could turn it into tools for monitoring and advocacy. With little demand from private actors as well as small civic demand, the impact of open contracting would stay limited.

The example of the IMS system project in Dhangadhi municipality shows that with dedicated leadership, it is possible to implement open contracting systems on the sub-national level even where initial capacity is low. Interview respondents pointed out that in Dhangadhi many workshops were required with the community committees and the various stakeholders (user committees made up of citizens, engineering and accounting departments within municipality government, etc.). In these workshops, the focus was on convincing the stakeholders of the benefits and added value of the IMS system, clarifying

Recommendations

- **Given the low-tech environment in Nepal in terms of ICT availability and skills as well as a lack of institutional culture for openness, one approach to fostering OC in Nepal would be to move away from "high-tech" solutions such as OCDS and instead focus on initiatives that match the environment such as community contract monitoring.**
- **A local and sectoral approach like in Dhangadhi can help to set an example for other sectors and regions as a role model and inspiration that could snowball across the country.**
- **The awareness raising of civil society and citizens to build a bottom-up demand for procurement information could go hand in hand with the local approach.**

NIGERIA

Overall assessment

Despite great promise and technical support available, Nigeria does not yet publish procurement data of significant scope or quality. Hence the reform effort falls so far in the category of cosmetic implementation of transparency reform. The process of implementing open contracting appears to have stalled over disagreements between the supporting actors and the procurement agency's desire to fully own the process and platform while facing capacity gaps as well as lacking commitment from procuring entities to proactively and timely share procurement information.

Reform strategies used

The initial strategy of the **civil society actor PPDC as a main driver** was to provide a showcase open contracting portal, Budeshi, to get political buy-in from key agencies and the national leadership, which succeeded in 2016. However, the hand-over to the national procurement agency failed and the PPDC has refocused on supporting subnational state-level open contracting reforms as well as providing procurement information based on FOI requests.

Country governance context

Nigeria became independent in 1963 and was governed by a military regime until 1999. Nowadays, Nigeria is Africa's most populous country, with an economy built

to a large degree on its abundance in natural resources, especially oil. It is classified as a lower middle-income country¹⁵. Since its turn to democracy in 1999, Nigeria is a federal republic made up of 36 states. The president is the head of state, the head of government, and the head of a multi-party system. In the last decade, it has made some progress on strengthening government institutions and fighting corruption, however its governance system is marked by conflict along the lines of political competition and ethnic, religious or resource allocation rivalries. It ranked 146/198 in the 2019 Corruption Perceptions Index.

PP profile

In Nigeria, 30% of GDP is spent on public procurement with an annual number of tenders around 30,000 and a value of US\$ 30 million (World Bank, 2018e). At the same time a large share of corruption scandals are related to public procurement (World Bank, 2000). Since Nigeria is a federal state, its procurement function is decentralized to the degree that each state has its own public procurement law and decides autonomously on procurement unless a project receives more than 35% funding from the federal government. The national authority of the Bureau of Public Procurement only deals with federal government spending which makes up 48% of the state budget.

Reform trajectory

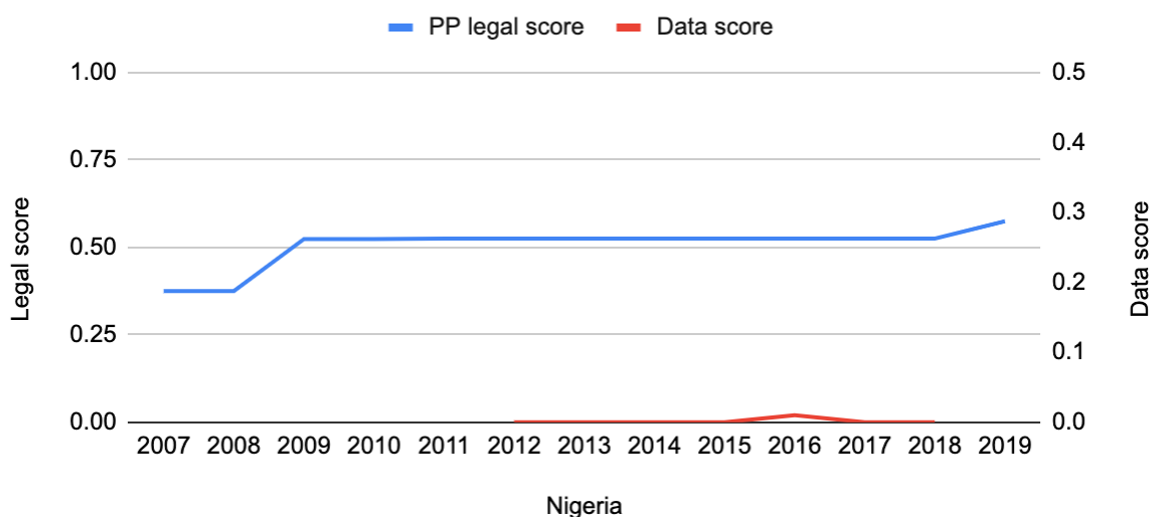


Figure 13: Development of Nigeria's legal framework pertaining to transparency in public procurement and its public procurement data availability and quality score over time based on the data downloaded in May 2020 from Budeshi.

¹⁵. GNI per capita between \$1,006-\$3,955.

Legal framework

Following a World Bank Country Procurement Assessment (2000) led to the formulation of the first public procurement bill. The resulting Public Procurement Act (PPA) was promulgated in 2007 and established the Bureau of Public Procurement (BPP) with funding from USAID and the WB, which oversees procurement policy formulation and implementation. It formulated the subsequent Public Procurement Regulations.

In addition, part of the functions of the BPP was to establish a single internet portal that would serve as a primary and definitive source of all information on government procurement containing and displaying all public procurement information. The 2007 law requires procuring entities to publish calls for tender and contract awards, among others, on their own websites and on the BPP website.

The 2011 Freedom of Information (FOI) Act gave rise to information requests by civil society actors like the Public and Private Development Centre (PPDC). When their requests remained unanswered, the PPDC used the FOI Act to sue for public procurement information from Federal Ministries, Departments and Agencies (MDAs) and private actors in court, which was granted in over 95% of the cases¹⁶.

In 2019, the BPP published a Circular laying down Open Contracting Guidelines which stated that all procurement information and documents will be published on a web-based platform, the National Open Contracting Portal (NOCOPO), however implementation and enforcement has remained weak.

Data mapping

Data availability and quality

Since the BPP's NOCOPO Open Data portal was unreachable at the time of research (the website was down), the data used for assessment in the case of Nigeria were downloaded from the civil-society run Budeshi portal in May 2020. The data on Budeshi are collected by the PPDC using data they receive from over MDAs in response to their FOI requests. Currently, they make over 300 FOI requests annually and receive information from over 90 MDAs. PPDC converts the often hard-copy documents to the OCDS format and updates the Budeshi platform with this data.

The Budeshi portal publishes public procurement data from 2015-2019, with around 9500 procurement processes published for the five years. The share of key

variables available is around 17% on average. For around a third of the observations, the data covers information on the procurement planning phase and the call for tender. Regarding the contract award and signature phases, the dataset only contains data for the years 2015 and 2016. Information on cancelled or modified tenders is missing, as is any data on contract implementation.

As of now (status: 17th August 2020), the NOCOPO website is back online and its Open Data section displays roughly 13,000 procurement processes listed for download as individual OCDS JSON files, however they are not made available as a bulk download and have not been analysed.

Data systems setup

Following its creation in 2007, the BPP designed standard templates made available to procuring entities to fill out their procurement information, in order to publish records on its website and make them available for download in Excel format. This system suffered from lack of compliance as procuring entities were either not familiar with the software or did not have the means to do so. The BPP also began to develop internal databases of suppliers, cost-estimates, procurable items, and annual procurement plans.

In parallel, the PPDC had worked on procurement monitoring since 2010 and developed the idea to build a portal with procurement information to help their efforts. When the OCDS was launched in 2014, the PPDC with the help of external experts decided to attempt building an OCDS-compliant procurement information portal in order to showcase it to the government and convince it of the usefulness of procurement transparency and the data standard. Out of this effort, the Budeshi portal was born. The PPDC successfully engaged with various MDAs, especially the Ministries of Health and Education. When president Buhari came to power in 2015 with a strong anti-corruption mandate, the PPDC successfully approached the Anti-Corruption Commissioner who forwarded their proposal and the prototype portal to the president. In 2016, at the London Anti-Corruption Summit, the president publicly committed to adopt open contracting and the OCDS for key sectors such as power and oil which was laid down in Nigeria's OGP commitments.

Subsequently, the PPDC and OCP tried to engage with BPP to implement the commitment and hand over Budeshi. However, the BPP decided to design their own open procurement platform based on OCDS, NOCOPO. The portal was to serve as the source of procurement information until a more definitive e-procurement system

16. See an example of a successful case against the Federal Ministry of Finance here: <https://www.procurementmonitor.org/foi/law-reports/ppdc-vs-fed-min-of-finance/>

was developed. It was set up as the central platform on which procuring entities can enter procurement data, citizens can access them and provide feedback to the government agencies. Since December 2018, the platform started publishing OCDS data on its Open Data section that displays procurement records in tabular format and allows users to do simple and advanced searches based on specific fields such as contract status, contractor and budget year. The portal is reported to not be technically mature yet and a lot of procuring entities do not or are not able to upload their data to it, despite BPP's repeated requests for them to do so.

In addition, BPP is currently in the process of setting up an e-GP system and choosing a vendor for providing it. Experts also mentioned that an amendment to procurement law is underway which could strengthen publication practice and help implement an e-GP system.

State-level procurement data platforms

In collaboration with the PPDC, the Kaduna state government led by a reform-minded governor has set up its own procurement data portal since 2016. It publishes OCDS-compliant CSV and JSON datasets. The Kaduna state government also builds an e-GP system with the support of the World Bank. A number of other states are in the process of setting up their own open contracting portals¹⁷.

The PPDC's strategy to state-level open contracting reform has several main components. Firstly, they conduct user research in order to understand the different needs and behaviours of the various data users (public, private, civic) that will guide the design process. This is to ensure acceptance and adoption of the final portal and to create a sense of ownership. Secondly, they conduct intensive training and capacity-building of a number of stakeholders. This includes local civil society to train them on freedom of information and how to analyse data on the platform and use it for monitoring. For investigative journalists, they train them on how to link the state budget and procurement data in order to carry out investigations and report cases of red flags and corruption and learn how to write data-driven stories with human angles. Regarding government stakeholders, the PPDC trains the procurement officers across MDAs on how to proactively and timely enter the information in the datasets and how to understand OCDS.

Actors

Government institutions

The main government institutions involved in the process of opening up Nigeria's procurement data include the

BPP as an oversight institution tasked with implementing an open contracting platform. According to the Public Procurement Act, the BPP has the mandate to ask agencies to send in their procurement data for review, however it does not sanction MDAs that do not comply.

Oversight institutions

The Auditor General of the Federation and the Anti-Corruption Commissioner were key champions in the early days of open contracting in Nigeria. Following the PPDC's presentation of Budeshi to the Commissioner, they took to the president who then publicly committed to open contracting at the 2016 London Summit. Hence, these institutions paved the way for engagement with the high-level leadership.

Civil society, citizens, media

While PPDC is clearly the leading civil society actor on procurement data transparency, a few other organizations are working on related issues of social accountability, such as Reboot, the Transparency and Accountability Initiative, the TI chapter CISLAC, the initiative Publish What You Pay, and the Zero Corruption Coalition. The idea of open contracting has taken root in this small but active civic space. Given that the engagement at the federal level with the BPP has slowed down, PPDC and other actors have moved their attention from federal to state level. As the capacity of civil society and media to use open data is limited, they shifted the focus on the data users in order to build a community of practitioners that can demand for the right data (see also Keevill & Jarvis, 2018).

Civil groups are generally free to operate and get to cooperate with government agencies where they provide benefits to the value of a public body's work. However they lament the lack of cooperation with government agencies that goes beyond commitments and into actual implementation. In terms of contract monitoring initiatives, not many active initiatives are known. The PPDC is training local communities and civil society on freedom of information and how to analyse data provided by the Budeshi platform. They are also actively encouraging journalists to use Budeshi data for investigations, providing resources and support for such endeavours. They have recently launched a call for applications for independent investigative projects from journalists who need support for travel and other reporting expenses using datasets on Budeshi. The PPDC considers media to be crucial to spur change and as a key user of procurement data.

International donors/organizations

OGP and the commitments of the Nigerian government on open contracting that it laid down in 2016 were key in accelerating the implementation of procurement data transparency. In addition, OCP is one of the key

17. For an overview of Nigeria's Open State Government Ranking, compiled by PPDC, see: <https://www.procurementmonitor.org/open-state/Home/latest>

international players that have come in to support the implementation of the commitment, assisting PPDC and engaging with the BPP. Recently, OCP has provided funds, together with **TI**, for PPDC to conduct research on the NOCOPO portal.

On the state-level, the WB has been identified as an important actor. It runs the State Transparency, Accountability and Sustainability Program which disburses grants conditional on states' achievement of a fiscal sustainability plan. One of the indicators for disbursing funds is improved procurement practices with increased transparency and value for money, including the requirement that state government publish contract award information in OCDS. This has enabled civic actors like PPDC to successfully engage with state governments as they provide assistance for the achievement of WB requirements.

Impact mechanisms

Political will

In 2015, president Buhari got elected with a campaign and mandate centering on anti-corruption. His OGP commitment to open contracting in key sectors at the 2016 London Anti-Corruption Summit, driven by PPDC through the Anti-Corruption Commissioner to the president, reflects this position. Given this high-level government commitment, expectations of the implementation were high. Nevertheless, at the ministry, department and agency level the lack of translating this commitment into implementation has been widely criticized.

Following the 2016 OGP commitment, the implementation of open contracting was directed to the BPP as the federal procurement oversight agency in charge of information disclosure. As the PPDC had already developed Budeshi as a proof-of-concept to the government, aimed to hand over the platform to BPP to implement open contracting. OCP joined the effort and offered its support in the process. However, the BPP created its own portal, NOCOPO and the cooperation between the agency and the supporting actors has stalled since 2019. Experts commented that the BPP did not accept Budeshi for reasons of ownership and resistance to close involvement of civil society. Tensions between the PPDC and BPP institutionally as well as between the leading individuals have led to a breakdown of cooperation. The current portal NOCOPO appears to be updated regularly, but is not widely used and appears to have technical difficulties.

On state level, the Kaduna state government is an example where political will for open contracting at the top has translated into reforms. The governor of Kaduna state is said to be a reform-minded politician who saw an opportunity in embracing open contracting. Experts were

divided whether this commitment was driven by a genuine interest in transparency and accountability or for reasons of political branding. They agreed, however, that the state level provides an easier playing field for transparency reforms with smaller and less complex procurement governance systems than on the federal level.

Capacity

BPP has invested in providing training to procurement officials and professionalised the position. Nevertheless, in terms of procurement transparency, many MDAs do not or only partly upload their procurement information proactively on the NOCOPO portal. In some cases, this might also be related to a lack of IT facilities and internet access. One expert commented that there is a culture of non-disclosure in Nigeria which prevents public officials from publishing information that could negatively affect them in any way. At the same time, BPP itself is constrained in human and financial resources as well as technical expertise for data disclosure.

On the sub-national level, as mentioned above, the PPDC has extensively trained local civil society, journalists and procurement officers to counter the existing capacity gaps at all levels. Since open contracting portals and OCDS are very novel to many, the PPDC considers it imperative that continuous training is in place to ensure successful uptake of the portals.

Recommendations

- **From the experience of PPDC and OCP, it seems unlikely that civil society is currently well-positioned to constructively engage with the BPP on open contracting and improving the NOCOPO portal. In addition, enforcement mechanisms at national level for data disclosure remain weak due to decentralization and a lack of monitoring and sanctioning mechanisms.**
- **In the absence of obvious entry points at national level and given the decentralized nature of the Nigerian procurement system, one path to fostering open contracting in Nigeria is to follow the route PPDC has taken, which identifies progressive governors, capitalizes on their will to reform, be it genuine or for political branding, and helps them to implement OC portals.**

SOUTH AFRICA

Overall assessment

In South Africa, a general consensus has emerged, based on our evidence, that public procurement has descended into a crisis of non-compliance, corruption and operational inability. Compared to other countries of similar or lesser development status, South Africa's public procurement system remains a long way from being efficient and transparent. One interviewee explained that the Zuma administration's state capture put open government initiatives back by ten years, while other countries have moved forward in the same period.

In general, existing levels of non-disclosure appear based largely on established practice and on misunderstanding or misinterpretations of existing law. There is a widespread recognition that the resulting secrecy has enabled the destructive spread and scale of corruption in procurement processes, and that drastic changes are needed. Nevertheless, such broad-based reforms, including open contracting, are facing institutional challenges (decentralisation of the system), political headwind and resistance to change from all sides.

Reform strategies used

The introduction of the eTender portal, **driven by internal pressure of National Treasury to improve control and comply with legal requirements**, does not amount to a transparency reform as illustrated by the little data output it generates. The only other reforms that have led to some increased transparency have happened at sub-national levels and at sectoral levels (e.g. Western Cape open contracting portal implemented by the opposition-run provincial government, Vuleka Mali Infrastructure Transparency Portal).

Country governance context

The Republic of South Africa is a parliamentary representative democratic republic. The President is elected by the National Assembly and serves both as head of state and as head of government. The country is divided into nine provincial legislatures which govern each of the country's nine provinces. Since the end of apartheid in 1994 the African National Congress has dominated South Africa's politics. Public procurement as a source of corruption has been on the public's radar since a major arms deal scandal in 1999.

More recently, South Africa has been rocked, in 2018/19, by revelations, made at various commissions of inquiry, of alleged large- and wide-scale corruption involving organs of state. The phenomenon of 'state capture' became commonplace in the public sector under the leadership of former president Jacob Zuma. An investigation by

former Public Protector Thuli Madonsela revealed that state capture was primarily enabled by President Zuma allowing the three Gupta brothers to take decisions to appoint and remove chosen individuals to key positions in the state, who then ensured the manipulation of the state's procurement and licensing processes for the benefit of particular politically-connected private companies and individuals, including President Zuma's sons and allies, as well as the Gupta brothers and others.

The appointment of these commissions such as the Judicial Commission of Inquiry into Allegations of State Capture suggests that fighting corruption in public procurement is high on the agenda of the current government. For example, as part of his efforts to clean up public procurement, President Cyril Ramaphosa announced in February 2018 that non-executive directors of state-owned companies will be removed from any role in procurement.

PP profile

South Africa has a high volume of public procurement with around 7000 tenders being issued on a daily basis and an annual contract value of over US\$ 12 billion, 19.5% of gross domestic product. The South African public procurement system is complex. It is operated by over a thousand organs of state that delegate to tens of thousands of divisions, field offices, schools, hospitals, and so on, with hundreds of thousands of registered suppliers entering into over two million transactions annually (PARI 2019). The Auditor-General (AG) found that irregular state expenditure (national, provincial and local government departments and public entities) in the 2017/2018 financial year was R50-billion, although the final figure was expected to be higher because some government departments and public entities had not submitted reports. Almost 84% of irregular expenditure was caused by non-compliance with the procurement regulations that are spelled out in the Public Finance and Management Act.

The reform trajectory

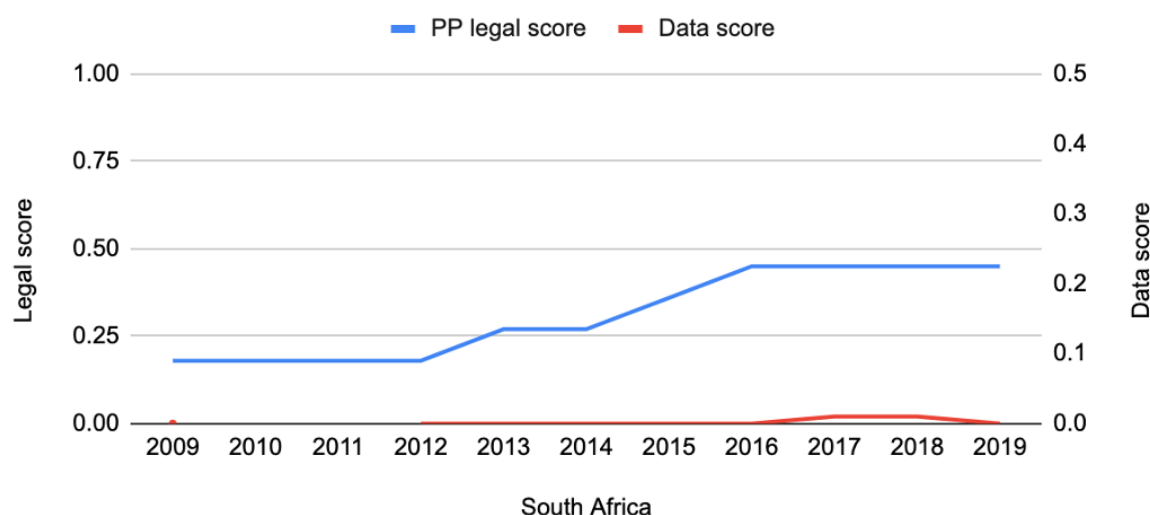


Figure 14: Development of South Africa's legal framework pertaining to transparency in public procurement and its public procurement data availability and quality score over time based on the data scraped from the South African eTender portal and republished for download by TI-Health on the [Open Contracting Hub](#).

Legal framework

Public procurement reform was given priority on the agenda of the first post-apartheid government. The Department of Public Works and the National Treasury led the process – supported by a jointly established Procurement Forum – and by 1997 had produced the Green Paper on Public Sector Procurement Reform. Under the Public Finance Management Act 1999 and the Municipal Finance Management Act 2003 public procurement managerial powers were devolved to the accounting officers and authorities of individual departments and other organs of state. The Public Finance Management Act, 1999 (PFMA) delegates the authority for procurement decisions to each accounting officer or authority in national and provincial institutions.

The current regulatory framework for South Africa's public procurement laws is very complex, and fragmented and inconsistent as the system is layered with different legislation governing different areas of procurement and different legislation applying at national, provincial and local level (Quinot, 2020). The four most important statutes are the Public Finance Management Act, the Municipal Finance Management Act, the Preferential Procurement Policy Framework Act and the Construction Industry Development Board Act, but many of the significant and decisive rules are contained in diverse sector statutes. There are at least 23 statutes that contain some rules on procurement and a vast array of subordinate legislation that brings the total of distinct pieces of law to around 85. Their scope differs and some overlap or even contradict each other (Quinot, 2020).

The Promotion of Access to Information Act, 2000 (PAIA)

provides the framework for access to information in South Africa. At its most simple, the law creates a presumption of openness in relation to all public records, and to all private records if required for the exercise or protection of any other right. In spite of this presumption, procurement information has by default usually been treated as confidential by procuring entities referring to the clause on protections for commercially sensitive information (HSRC 2020).

In accordance with the Supply Chain Management Regulations promulgated in 2003 by National Treasury, tender advertisements and award decisions require proactive disclosure. This was reinforced by National Treasury instruction 1 2015/16 requiring that accounting officers put tenders on the [eTender portal](#). The legal obligations require that bid notices are advertised for thirty days among others on Treasury's and procuring entities' websites and the information on contract award must be published on Treasury's eTender publication portal within seven working days of making an award. In practice, however, only very limited information is published on the eTender platform, as the Data mapping below shows.

Currently, it is criticized that the existing transparency provisions are not working as the rules for tender advertisement, disclosure of evaluation criteria, and publication of awards are frequently breached. Despite a system of checks and balances in public procurement where responsibilities are divided across the stages of the procurement process between end-user departments, supply-chain-management units, and various committees, procurement operations are undermined by political

appointments and the exertion of influence on public officials. According to Brunette & Klaaren (2019, 2020), politicisation is a fundamental cause of the lack of enforcement of compliance in the public procurement system and the consequent erosion of rules, procedures and discipline associated with corruption.

Since 2016, the government has been committed to introducing a Public Procurement Bill into Parliament, which was published earlier this year and is currently under review. It is intended to respond to the problems of fragmentation and inconsistency in the present public procurement legal framework and will play a key role in enabling and constraining the future process of transparency reform. In its current form, it establishes a Public Procurement Regulator within the National Treasury to supersede the OCPO and gives it the mandate to require public institutions to publish information on their procurement proceedings and establish data retention and reporting requirements. In terms of transparency provisions, the Bill only expresses vague aspirations to use technology in the administration of procurement and it falls short of specifying the details of publication practice, including the platforms or data standards to be used¹⁸.

Data mapping

Data availability and quality

The data used for assessment is based on data scraped from the South African e-Tender portal and republished for download by TI-Health on the Open Contracting Hub. The dataset shows that the publication of procurement information remains very limited, only between a few hundred to a few thousand procurement processes were published between 2015-2019. The quality of the data as in the share of key variables amounts to around 30%. The data covers calls for tender and contract award information, but no information on modifications or cancellations, contract signature or implementation and supplier performance is provided. It includes identifiers such as tender IDs and bidder IDs. The data is not provided in a downloadable or analysable format.

Data systems setup

In the absence of a comprehensive new procurement law, National Treasury has tried to make part of the supply management system electronic by creating an online supplier database and the eTender portal. Only the latter is also visible to the public and, as discussed above, it holds only very limited information. Besides a lack of implementation and enforcement across procuring entities, progress towards a comprehensive procurement data system is hampered by the existence of other unintegrated

government information technology systems – most prominently, BAS (the accounting system), PERSAL (personnel), and LOGIS (logistics).

Even internally, on the part of National Treasury and OCPO, procurement data is not being collected in a structured and organized way. In addition, about two-thirds of procurement takes place on municipality level where procurement is often still paper-based and record-keeping usually amounts to highly aggregated reports on spending per year, for example. There is a lack of data collection and publication being built into the procurement system.

Although this report focuses on national level policy-change and reform processes, it is worth mentioning some of the data transparency initiatives that have emerged in a number of sub-national level procurement functions. First, the Western Cape province runs its own open tenders platform, interviews highlighted that this is the only province run by an opposition government which has emphasized anti-corruption as part of its governance. Second, the OCP has worked with Gauteng province to open its procurement processes but the resulting website is not accessible anymore. Third, the National Treasury has developed the InTACT Toolkit for cities about transparency and accountability which also promotes open contracting systems. Another important National Treasury initiative is the Municipal Money platform which allows for budget monitoring and aims to include procurement information. Lastly, the largest sub-national effort to publish procurement data is the Vuleka Mali project, run by National Treasury and Imali Yethu – a coalition of civil society organisations – with the goal of making government budget data and infrastructure procurement data available. National Treasury appointed the civic tech organisation OpenUP as a service provider for the project. As some of the project implementers reported, gaining access to the infrastructure procurement data was very difficult and continues to be limited, as they are not consistently recorded in any of the internal management systems.

Actors

Government institutions

As all public financial management, public procurement falls under the mandate of the National Treasury. However, due to the decentralized setup of the public procurement system, the National Treasury does not have the means to effectively monitor and sanction compliance with transparency requirements. The National Treasury subdivision of the OCPO was established in 2013 without

18. According to observers, the bill does not sufficiently take transparency into account -- see OCP's and Corruption Watch's comments and recommendations.

having been set up by, which would change with the new procurement bill replacing it with a Procurement Regulator. Interviewees commented that the OCPO operates under intense political pressure and has very limited powers. The Office issues directions and practice notices and guidelines for other departments on the interpretation of the law, but does not take the lead on procurement reform (Pienaar & Cosser, 2020; HRSC, 2020).

While the OCPO should be the leading institution for procurement reforms, there are more units within the National Treasury which operate parts of the procurement cycle and hold information, such as the unit on budget, planning, statistics, expenditure monitoring, and reporting. Outside of the National Treasury, the **Department of Public Works** has become more reform-minded and taken some procurement matters into its own hands.

Oversight institutions

The **Auditor General** conducts annual investigations into public procurement spending and recommends changes, but implementation is weak. It was also reported that the previous **Public Protector** (during the Zuma government) tried to uncover corruption cases in public procurement but faced great challenges and even death threats.

Civil society, media, citizens

There are a number of CSOs working on social accountability and transparency issues and together with the media they have a strong voice in raising awareness about issues in procurement. They are generally independent and free to operate, especially since the end of the Zuma government. The wider social accountability framework is relatively strong and developed in South Africa, there are numerous initiatives around budget monitoring or public service accountability. For example, the **Public Service Accountability Monitor** which started in 1999 as a project to track maladministration and corruption in a certain province and has grown to form part of the School of Journalism and Media Studies at Rhodes University interacting with many state actors. Social accountability is also one of the themes of Treasury's **InTACT project**, underlining its importance to state and non-state actors, as one interviewee put it "South Africans have a strong sense of accountability in the sense of rights fulfilment". However, on contract monitoring specifically, fewer initiatives were known to the interview respondents.

On open contracting, **Corruption Watch** is the leading actor, which has recently convened an informal working group on open contracting which involves other civil and academic actors from this field. At the sub-national level there are initiatives touching upon open contracting such as the **Good Governance Learning Network** which runs the Open Cities Lab.

International actors

The South African government does not partner with a lot of international actors in the field of public sector transparency. There are only a few actively working such as **GIFT** (fiscal transparency), **CoST**, and the **International Budget Partnership** (Westerhuizen, 2015).

Private sector

Besides calls from civil society, the demand for improved and more transparent public procurement comes from the private sector, especially those companies seeking to enter procurement markets and suffering from the consequences of widespread corruption.

Impact mechanisms

Political will

Since the fall of the Zuma government in February 2018 and the inquiry into its wrongdoings by the state capture commission, public procurement integrity has reemerged on the government's agenda. The fact that the public procurement bill has finally been published early in 2020 is attributed to the current government being more willing to open up public procurement, compared to the preceding administration which sought to keep procurement closed.

Within the OCPO, it was commented that the initial appointment of the Director General, Kenneth Brown, brought a very reform-minded agenda in 2013. However, he was soon replaced by other leaders: the OCPO has seen three acting chief procurement officers over the past three years (appointed by the Minister of Finance and Director General of National Treasury). The will to reform and push for procurement transparency differs with their agenda and the political pressure exerted on them.

In recent years, the National Treasury has also shown genuine will and interest to reform public procurement launching initiatives such as **Municipal Money** and **Vuleka Mali**. However, former Treasury officials commented that the Treasury has been restructured to appoint a less reform-minded leadership. The ebbing of reforms meant that individual champions of reform and transparency can face political and career consequences.

In sum, there definitely is genuine interest from some people in mid-ranking government positions to improve the procurement system and pursue transparency, even high up in government there is some interest in change. However, due to the decentralised nature of the procurement system, some politically powerful blockers and the inertia of the state machinery, the existing political will does not suffice to implement far-reaching reforms that could substantially open up procurement data.

Capacity

There are major deficits in the capacity of public procurement functions at both regulatory and operational levels. The system does not have enough sufficiently skilled public procurement personnel employed within appropriately designed organisational structures. The OCPO is charged with modernising the procurement system that processes a million contracts annually. In 2016, OCPO had just 68 employees and few have extensive formal education in procurement or closely related fields such as supply-chain management and logistics. Very few are members of public procurement professional bodies, specifically the Chartered Institute of Procurement and Supply (CIPS). OCPO lacks the capacity to ensure that portals and mechanisms are working, current staff are dependent on external service providers instead of in-house IT staff, and it lacks financial and human resources. National Treasury is also reported to be very stretched, with a diminishing budget. Vuleka Mali's inability to get sufficient access to procurement data shows that even those with a real commitment and access to internal government data do not necessarily have the decision-making capacity or the ecosystem supporting them.

Procurement Officers' capacities vary widely, they do not need to undergo training or have any kind of qualification to take up a procurement position. In contrast to other countries, in South Africa, public procurement is not formalized as a profession with a coordinated training program. For a few years, National Treasury issued competency guidelines listing the competencies a PO should have to qualify, however the expectations were unrealistic so that many posts stayed unfilled. National Treasury then attempted to provide more training to POs but because of shortage of funds and actual trainers, there has not been much impact. Among POs, there is a significant level of lack of awareness, uncertainty and confusion about required information disclosure standards at various stages of the procurement cycle, and widespread ignorance about what types of information relating to various stages of the procurement cycle can lawfully be proactively disclosed. In addition, many officials fear the potential legal and personal or financial consequences if they commit errors and disclose information that might be confidential.

In terms of proficient data users demanding transparent procurement data, there are only a few specialist organizations, like Corruption Watch and Public Service Accountability Monitor, as well as some investigative journalists working with procurement information.

Recommendations

- Given the economic downturn in South Africa and that it is one of the countries hit hardest by the Covid-19 pandemic, value for money in procurement and especially in the health sector is going to be a very salient topic in the near future. One approach could be to learn from the Vuleka Mali Infrastructure Transparency Portal and extend from this experience to the health sector.
- At the same time, the currently tabled procurement bill poses a great opportunity to shift the legal framework towards including more and clarifying transparency requirements in public procurement. Civil society should use all the advocacy tools at its disposal (such as commenting on the draft, as CW and OCP have done) to support this shift.
- In the absence of obvious entry points for civil society to cooperate with Treasury/OCPO on open contracting, another useful national level strategy that CW has taken is to map all the existing government websites publishing procurement data in some form and compare it to the OCDS and legal requirements. This can be turned into an advocacy tool for government entities on how to better publish procurement data, which might reach more or less receptive response depending on the government entities and individuals working with procurement information.
- Another opportunity would be to capitalise on the strong sense of social accountability across South African society (and their oversight institutions of the Auditor General and the Public Protector) and expand that to the field of procurement. This could mean to identify areas where procurement entities have close links to public services people are concerned about and raise awareness around how public procurement impacts their lives. One promising route could be to link procurement to public participation in budgeting, which is relatively strong and widespread across South Africa.

TANZANIA

Overall assessment

Starting in 2015 under Magufuli, Tanzania pursued a harsh anti-corruption drive with numerous high-level court cases and the dismissal of numerous public officials. However, the leadership appears to have decoupled anti-corruption from transparency efforts as illustrated, for example, by its withdrawal from the Open Government Partnership in July 2017. Instead, authority over information has been centralised within the government as have many other government functions.

There is little transparency reform to speak of, rather a general reform of the procurement system since 2005 that incorporated some international standards, such as requiring the publication of tender notices and contract awards and mandating the PPRA to set up a dedicated website. The move towards e-Procurement was pushed by the World Bank and is so far implemented half-heartedly, with parallel manual and electronic systems. In addition, the TANePS does not enable increased transparency (although in theory it technically could) compared to the previous Tender Portal, it rather restricts information access - particularly regarding contracts and records of historical calls for tenders.

The main explanation for the existing PP transparency is the PPRA's attempt to comply with the legal framework passed in 2013 under the previous administration and driven by external pressures from donors as well as internal internal governmental demand, which requires at least the basic information of tender and award notices to be published centrally and gives PPRA the mandate to do so. However, it is not clear in the operationalisation of transparency as it lacks definitions of who is to publish what, when and where, especially when it comes to historic calls for tender and contracts. The Procurement Act is strong in defining the proper PP process, but not as clear in the operationalisation of transparency. Some data transparency might be a side product but not a goal in itself.

While some individual agencies are actively promoting transparency and the publication of tenders is ongoing, little attention is paid to ensuring that data are comprehensive. Whereas a new e-Procurement system has been launched and tested, given that the digitally collected procurement data is only partially available to the public and that most procurement processes are still done on paper, it remains a question of how much it contributes to transparency. Currently, a login only available to registered suppliers is required to access details on contracts. Clearly, there is a lack of demand from below and of actual pressure from above for better

data publication. At the same time, international donors have seen their sphere of influence dwindling with the current government.

In sum, the existing limited data transparency appears to be a remnant of the previous government's policy direction and proof of some individuals' commitment to PPRA's mandate as well as a side product of the shift to e-Procurement but not a goal in itself that has significant political will behind it.

Reform strategies used

The small improvements in transparency that we have seen in Tanzania since 2009 do not amount to a transparency reform. Nevertheless, the incremental changes that have at least led to the online publication of current tender notices and procurement plans as well as rudimentary details on the contract award have been driven by PPRA in an attempt to fulfill its function and the legal framework that mandates it demand this information from PEs and publish it centrally.

Country governance context

The country of Tanganyika achieved independence from British rule in 1961. Tanganyika united with Zanzibar in 1964 to become the United Republic of Tanzania. It is classified as a low-income country¹⁹. Tanzania is very ethnically diverse but has constructed a strong national identity post-independence (partly to maintain the fragile unity with Zanzibar) illustrated by the widespread use of Swahili as the lingua franca. Compared to its neighbouring countries' struggles with ethnic and regional conflicts, Tanzania has retained a more stable political order over the decades.

Tanzania embarked on a socialist development path following independence. It lasted for about 20 years until economic collapse forced the country to turn to the International Monetary Fund which required it to implement structural adjustments such as liberalising markets and taking measures to encourage private investment (Booth et al., 2014). The sweeping trade liberalisation largely affected the infant manufacturing sector negatively as it could not compete with the sudden inflow of imports (Cooksey, 2016). Many foreign and domestic non-African businesses were re-empowered by the reforms, while a native African business class, as established in Kenya for example, remains almost non-existent in Tanzania. As a consequence, policies that seem to foster foreign

19. GNI per capita of \$1,005 or less.

investment or other “capitalist” measures are often frowned upon by the Tanzanian ruling class.

In recent years, since the election of president Magufuli in 2015, the governance approach has renewed the focus on protectionism and the centralisation of powers and decision-making while other institutions and space for third parties and international involvement have weakened. President Magufuli launched an “anti-corruption war” with a number of high-profile court cases, the dismissal of public officials considered corrupt, and the recovery of assets – it was described as the “biggest anti-corruption move in recent decades”. This move was driven by the president himself, not the institutions tasked with dealing with corruption (e.g. the PCCB).

Regarding public procurement, there is underspending on the one side (PEs only spent 50-57% of their budget according to the CAG report 2018) while the official

procedures are frequently bypassed as officials avoid a process that is perceived to be tedious and bureaucratic.

Reportedly, there is a lot of mistrust between the government and business sector.

PP profile

The procurement system in Tanzania is decentralized, meaning that all entities covered by the law conduct public procurement activities individually. Centralized procurement is also allowed via the framework agreements. A contracting authority is permitted to enter into a framework agreement, provided that the agreement is arranged by the Government Procurement Services Agency for procurement of common use items and services and that the contract is valid for between one and three years only.

The reform trajectory

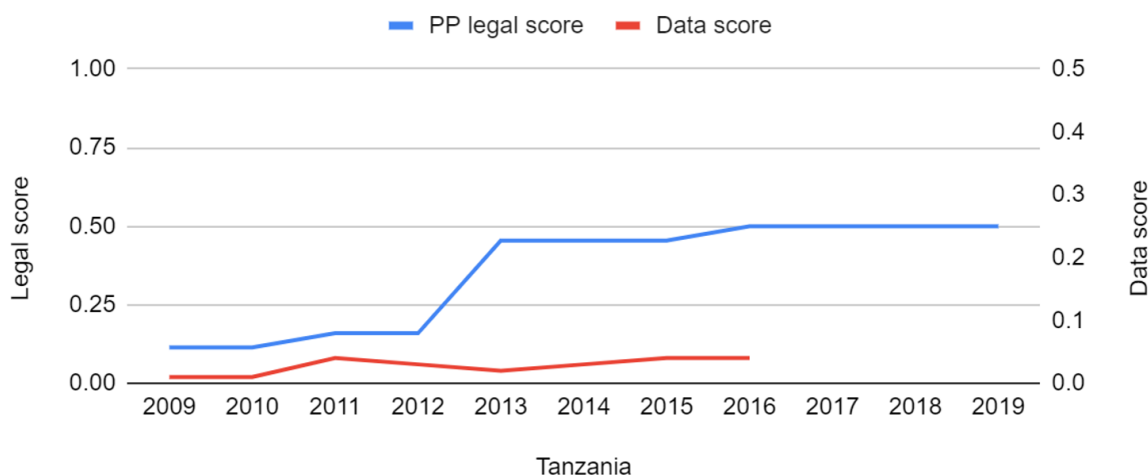


Figure 15: Development of Tanzania's legal framework pertaining to transparency in public procurement and its public procurement data availability and quality score over time based on the data collected in early 2017 from the previous PPRA Tender Portal which has since been replaced by the TANePS, from where data have not been collected.

Legal framework

Freedom of Information

In 2016, Tanzania passed an Access to Information Law which provides every person with the right to access information which is under the control of information holders. It does not specifically mention procurement documents, “information” is defined as any material which communicates facts, opinions, data or any other matter relating to the management, administration, operations or decisions of the information holder, regardless of its form or characteristics. It provides exemptions information that is likely to infringe lawful commercial interests. Reportedly, despite having the legal right to request information, it may take years to obtain it, or it might be simply nonexistent

(Kitoka, 2016; IDFI, 2018).

Public Procurement

In 2001, the discourse around the need for new procurement laws came from donor countries and especially the UN's encouragement of recipient countries to adopt a model PP law in order to gain access to funds. The model law was repealed and replaced in 2004 because it was deemed unfit for the Tanzanian context. The 2004 law established two important institutions – the Public Procurement Regulatory Authority (PPRA) for regulating and monitoring performance of public procurement, and the Public Procurement Appeals Authority for handling grievances.

In 2011, the Tanzanian government was pressured by

international donors to change the law in order to meet donor requirements in terms of transparency, equity, accountability, and value for money. This established the Procurement Policy Department (PPD) within the Ministry of Finance & Planning (MoFP) and thus took over the policy function from PPRA. In addition, the Government procurement services agency (GPSA) was established for the handling of procurement of commonly used items in framework agreements. Lastly, the Procurement and Supplies Professional Technicians Board (PSPTB) was established to certify procurement as a profession. In sum, between 2005-2015 under president Kikwete, public procurement policy gained traction as issues in relation to procurement were institutionalised and professionalised with the aim to conform to international standards (Kitoka, 2016; Wajibu, 2018).

In terms of transparency, the 2011 law mandated that the PPRA shall determine, develop, introduce, maintain and update related systems to support public procurement by means of information and communication technologies including the use of public electronic procurement. In addition, the 2013 Public Procurement Regulations added requirements on publication in the PPRA Journal and Tender Portal (now replaced by the e-Procurement Portal TANEPS), stating that a procuring entity shall publish the general procurement notice in the Tenders' Portal, submit a tender notice and contract award information to the Authority for publication in the Journal and Tenders Portal.

The Public Procurement Regulations of 2013 state that electronic procurement shall be implemented by all procuring entities in full or partially in parallel with the conventional manual procedures. Therefore, despite having an electronic public procurement system, Tanzania has what is referred to as a dual system, which gives equal importance to electronic and paper-based public procurement procedures.

In sum, the legislative framework of public procurement in Tanzania puts emphasis on defining the proper PP process, but is not as clear in the operationalisation of transparency as it lacks definitions regarding who is to publish what, when and where, especially when it comes to contracts.

Data mapping

The previous PPRA Tender Portal published information on advertised tenders and awarded contracts for the years 2009-2017. It did not contain information on procurement plans, modifications or cancellations nor on contract signature and implementation. It published information

on a few thousand procurement processes per year with a number of key variables covered, including contract information such as contract value, buyer details. However the average availability of key information fields was only around 33%. It provided tender and contract IDs, but no organisational IDs of buyers or suppliers. The information was not downloadable in bulk²⁰.

Furthermore, until 2019, there was the Procurement Management Information System (PMIS) as a tool to facilitate the exchange of information between PPRA and PEs. However, it was only intended for use by the procuring entities and not for the general public or companies.

The PMIS and the Tender Portal no longer exist and have been replaced by the e-Procurement system TANEPS, originally developed in 2013 with the support of the WB and after years of inactivity re-launched in 2019. It was tested with 100 PEs and is intended to be rolled out to cover more PEs. In terms of transparency, it only makes a few pieces of information available on those procedures that are conducted electronically. At the time of writing (August 2020), TANEPS provides the following information to the public: annual public procurement plans of 295 government agencies are available for download as Excel sheets; key details on current procurement notices (not historical - as was previously available on the Tender Portal) are available to be viewed online; and for 5,111 contract awards going back to October 2018 the public can view the tender ID, procuring entity, supplier name and award date. However, other information that by law should be accessible is missing, such as date of signing the contract, contract duration, more details on the procurer and supplier, procured goods, services and works, etc. and when clicking on the linked contract award, one is prompted to log in and registration is only open for supplier companies. Additionally, the datasets are not available in machine-readable formats such as CSV or JSON.

In sum, the fact that the digitally collected procurement data is only partially available to the public and that most procurement processes are still done on paper, reflects that the emphasis of the existing legal reforms lay on improving internal oversight and management but not necessarily transparency. One could even argue that with the shift from the Tender Portal to TANEPS as a procurement information portal, transparency has decreased since the latter provides less information than the former did (no historical calls for tender, no contract details).

20. For a detailed description of the Tanzanian procurement data infrastructure, see also <http://www.govtransparency.eu/index.php/2017/08/21/tanzanias-national-procurement-data-infrastructure/>

Actors

Government institutions

In terms of the mandate over public procurement information and transparency, the **PPRA** and the **MoFP** (with its **Public Procurement Department, PPD**) have the most influence. Both institutions are directly approved by the president. The PPRA is the body charged with regulatory functions and responsible for implementation of the legal framework in Tanzania. PPRA has oversight powers on all public procurement activities carried out by every procuring entity in the country. The main objectives of PPRA are to ensure the application of fair, competitive and transparent procurement standards and practices, to enhance the public procurement system and provide guidance to relevant stakeholders on how to properly engage in public procurement activities. PPRA has the mandate over procurement information, because the law instructs that every PE has to submit their procurement plans, calls and awards to them and report on implementation. They are supposed to upload information to the PPRA website (which used to have the Tender Portal sub-page, now replaced by TANEPS). The MoFP is the lawmaker, and receives the annual procurement performance reports from PPRA. According to interview evidence, the two institutions are battling over resources and mandate, for example on who has to provide for the capacity building of PEs.

MoFP is generally deemed receptive to transparency reforms but often cannot deal with political complexities. Therefore its approach is to design bureaucratic or technological solutions rather than creating institutional or systemic change. The PPD is considered to be short of resources. The PPRA was perceived to have a strong leadership with a considerable interest in transparency until the management was changed in 2019. In addition, PPRA is considered to be significantly underfunded – in addition to the funding assigned by MoFP, it relies on donor funding and does not have the means to conduct audits unless special audits are assigned by the government. In 2018, the PPRA complained that it only had sufficient resources to review one-third of the bodies under its mandate.

Accountability institutions

Reportedly, the agencies of accountability have all been suffering from financial constraints since about 2014. Important institutions like the **Controller and Auditor General**, and the **Anti-Corruption Bureau (PCCB)** have seen their recurrent budgets stagnate or decline, and this in spite of an additional workload (in the case of PCCB). In other words, the strong anti-corruption drive at the top of the government is not translated into funding for the institutions that should be in charge of it. This reflects the current government's approach of centralizing power over different parts of governance and managing its priorities in-house. Thus, accountability institutions do not have significant power to influence transparency reforms.

Parliament

The **parliamentary standing committees** used to be in favour of more transparency in public procurement, but they have reportedly been muzzled in recent years. In addition, there is a lack of understanding regarding procurement and what transparency would mean in practice. Currently, they are seen as quite passive and uncritical and not actively demanding transparency.

Donors

International organisations and donors across the board are lamenting the decline of engagement with the government since 2015. The Magufuli government has severed ties with a number of international actors. Importantly for transparency efforts, the government withdrew from the OGP **in 2017** as its principles of openness clashed with the government's direction of central control. The **WB** used to be an influential actor pushing the most fundamental changes, e.g. they supported the setup of TANEPS, but has reportedly lost much of its sphere of influence. **Hivos** advocated for the information on the PMIS to be made public, without success. Some individual government agencies might be more welcoming of external support than others but they are generally apprehensive of committing errors, while the international community is waiting for the results of the October 2020 national elections.

Civil society

There are very few organisations working on social accountability generally and on transparency in public procurement specifically. **Wajibu** is the main organisation actively advocating for this issue as well as Policy Forum to some degree, and some organisations focusing on the extractive sector (**Haki Rasilimali, Natural Resource Governance Forum**). CoST used to work in Tanzania but has **July 2020 declared** its country programme 'inactive' due to a lack of progress on the part of the Tanzanian members.

The space for civil society to work on the specific topic of procurement transparency is getting smaller. Even though there are some initiatives, CSOs generally appear to have been subdued in recent years with personal attacks and defamation and have very limited power to push for transparency. The **Tanzania Contract Monitoring Coalition** assumed a driving role during the previous administration but was dissolved in 2015 by the current government. A recent bill introduced a requirement for CSOs to register which has to be renewed every year and could thus be a way to pressure organizations into self-censorship. Similar experiences have been reported from the media with some newspapers having been banned.

Private sector

The private sector voiced strong interest in public procurement transparency, particularly since the current government took power, because "following the law

appears to be easier for business than being at the whim of personalities and moods of leaders". It was commented that compared to previous administrations, the connection between politics and business is nowadays based on fear, not friendship, and corruption has become more costly and insecure for companies. The [UN Global Compact Tanzania Network](#) in cooperation with business associations launched the Tanzania Business Integrity and Anticorruption Principles for the private sector which includes rules on clean procurement. However, there is no systemic push from the private sector specifying their needs in a more transparent public procurement system.

Impact mechanisms

Political will

In terms of government commitment to transparency, the official line as captured by interviews with government officials is that "the top leadership is supporting and interested, the important political will is there to make procurement more efficient and transparent". Others insist that, at the high level, the current government – while having taken an active stance on AC (which some say is more show than action) – is not actively promoting PP transparency, but rather efficiency at the cost of transparency, which is a reversal of the previous policy direction. The leadership appears to have decoupled anti-corruption from transparency efforts and instead, authority over information has been centralised within the government. As one interviewee put it: "the current political philosophy doesn't envision openness and transparency – transparency is not in the vocabulary of the government at the moment." This opposition to transparency is clearly illustrated by the dissolution of the Tanzania Contract Monitoring Coalition and the government's withdrawal from OGP. It was even reported that the government has been encouraging the use of false accounts to circumvent what are perceived to be lengthy and bureaucratic procurement procedures. In consequence, this undermines reporting to PPRA and subverts the structures and information that could safeguard spending.

At the level of the agencies governing procurement, they attempt to adhere to their mandate and some individuals actively promote transparency. The ongoing albeit limited publishing of procurement information is proof of that – however, there is no focus on comprehensive, consistent, standardised, downloadable, analysable data. Reportedly, the main motivation behind TANEPS was to overcome the previous challenges with the PMIS of moving information from PEs to PPRA. PPRA is described as hamstrung: despite having the legal mandate to reform procurement, they are not able to intervene as they cannot cover the loopholes and enforce regulations in a framework where the prescribed rules are not in operation. Generally, the current hope of PPRA and donors is to push things

through incremental technological improvement rather than institutional change that have no political will, because institutions are undermined by personalities who have more power.

The only major remaining cornerstone for PP transparency is the legal framework which requires at least the basic information of tender and award notices to be published centrally and gives PPRA the mandate to do so. Nevertheless, while the Procurement Act is strong in defining the proper PP process, it lacks detail on the operationalisation of transparency. This creates a challenging environment as there is a lack of demand from below and of actual pressure from above for such data publication.

Capacity

In terms of capacity, there are a number of factors that contribute to the gap in implementing procurement transparency in Tanzania.

Institutional capacity

First of all, most government institutions already struggle to fulfill their main tasks every day so that there is not much room for paying attention to transparency. The key missing resources are time, human resources and IT facilities and skills. As a consequence, a lot of PEs fail to adhere to the directive of sending monthly procurement reports to the PPRA on time, and there are no repercussions if they do not. It was pointed out that some might not even be well-aware of the latest amendments to the Procurement Act (Policy Forum translated it to Swahili and simplified it to enable better understanding). Besides, the institutional culture is not one of openness but rather of fear and therefore many officers are generally hesitant to provide information beyond the procurement plan.

Users & demand for transparency

Another capacity gap concerns the potential end users of procurement data and the ones impacted by it – ordinary citizens. A common criticism is that the public has no interest in procurement information and that they are unaware of their right to access information. There appears to be a great need to create an environment which is conducive to people exercising their rights in order to create a bottom-up demand for transparency. One way, which is currently not being done in public procurement is to simplify information and involve citizens in accessible ways.

Recommendations

- Given the current governance context (which might change after the elections in October 2020), there seems to be little space for civil society or international actors to push for open contracting in Tanzania.
- One potential entry point might be to establish contact with the PPRA and identify whether capacity gaps on the authority's side to fulfill its legal mandate could be supported, e.g. regarding the design, maintenance and operation of the TANePS.
- The efficiency route to public procurement reform is likely to become more salient as the global economic crisis hits. This may provide opportunities for international donors such as the World Bank to support public procurement reform as part of wider PFM improvement.
- The Tanzania Medicines and Medical Devices Authority, the federal agency with primary responsibility for ensuring the quality, safety and efficacy of medicines, medical devices and diagnostics, overseeing production, import, distribution and sales, is considered to be one of the most effective medicine regulatory authorities in sub-Saharan Africa, and Tanzania was the first African state to be recognised by the WHO as having achieved a well-functioning, regulatory system for medical products. The covid crisis may present an opportunity to build on this success in the coming months to enhance procurement reform in this sector and subsequently extend it to other areas.

UGANDA

Overall assessment

In Uganda, the government claims to be generally receptive toward open government initiatives and has issued numerous statements against corruption. That being said, many people lament a lack of real action and the systemic nature of corruption. Thus, anti-corruption action is comparatively weak but nevertheless the country has seen continuous moves toward procurement transparency supported and pushed by civil society that have proven relatively successful. Given the entrenched nature of corruption in Uganda, the level of transparency reform in public procurement since 2015 is remarkable and can mainly be explained by the strong coalition of PPDA and CSOs, **driven by popular demand and electoral pressure for anti-corruption in combination with internal governmental demand for greater control over public procurement.**

Compared to other countries, in Uganda procurement transparency has not come about as a by-product of efficiency reforms, but is pursued as an objective in itself thanks to the wide recognition of public procurement corruption scandals, the strong advocacy of CSOs and PPDA's openness to feedback and collaboration. The 2014 regulations requiring PEs to publish call or tender and award notices on the PPDA website provided the legal support to the transparency reform. With the launch of the GPP the data publication jumped up in 2015 and has remained around similar levels of availability and quality since. While the data published only represents a part of the procurement done in Uganda, it is published in analysable, reusable format. However, the legal framework does not provide for sanctions for non-compliance with the publication provisions which renders enforcement weak. Therefore, the scope and quality of the published data strongly relies on the goodwill of the procuring entities. PPDA and the MoF pressure them, e.g. by publicly listing those entities which have and have not complied, but do not have the tools to force them into compliance. The current move towards e-Procurement might further improve procurement data publication.

Reform strategies used

In the last decade, PPDA created substantial changes and improvements to public procurement transparency. They used their procurement audits and recommended changes based on the findings which resulted in action plans and were used as indicators to closely follow progress. The collaboration with AFIC, OCP and PPDA, resulted in the elaboration of action plans on GPP alignment to OCDS. In addition, TI-U, AFIC and other CSOs have built the capacity of public servants and citizens engagement in the

public procurement process. The action plans identified the main challenges to be addressed, objectives, key actions, milestones and stakeholders involved (specifying on the government and civil society/private sector sides). It was agreed that these action plans will serve as reference to monitor progress made in regard to Open Contracting in Uganda.

Country governance context

Uganda is a presidential republic with a multi-party system, in which the President of Uganda is both the head of state and head of government. President Museveni has been the incumbent since 1986. Legislative power is given to both the government and the National Assembly. Uganda is classified as a low-income country²¹. According to various interviewees, policy-making in Uganda's often takes into consideration the interests of important tribal groups, such as the Bugandas and Acholi. In addition, the Ugandan government maintains strong relationships with different international actors, such as China and the EU. The opposition is marked by a few prominent individuals (e.g. Bobi Wine).

PP profile

In public procurement processes, conflict of interest and corruption are common, particularly in local governments where Procurement Officers are appointed by the District Service Commissions, which are mainly composed of politicians who are well-connected with local businesses and vice-versa. Sometimes local PDUs are reported to suffer from political interference as politics continues to be an influencing factor especially in the awarding of big contracts. Low bidder participation is another common issue especially at the local government level. According to a bidder survey this is due to delayed payments by governments and (perceived) corruption, e.g. when a tender seems to be tailored to a specific company. Contract implementation is also described to be weak with companies failing to deliver according to contract terms. Nevertheless, in this arguably adverse context, public procurement information is being made available to the public on a transparency portal and even using the OCDS. How can we explain the significant improvements in transparency in terms of publishing open contracting data?

21. GNI per capita of \$1,005 or less.

The reform trajectory

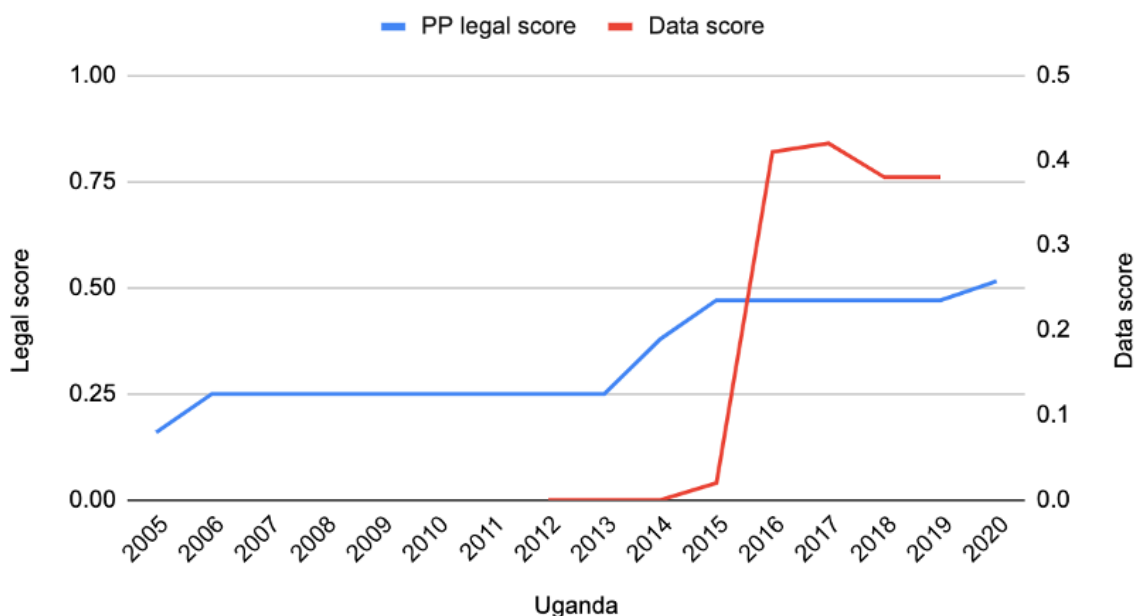


Figure 16: Development of Uganda's legal framework pertaining to transparency in public procurement and its public procurement data availability and quality score over time based on the data scraped from GPP in April 2020.

Legal framework

In Uganda, the transparency reform was part of a larger **procurement reform process** that goes back to the late 1990s, when the failure of the existing procurement system to cope with the expansion in government procurement requirements and to deliver value for money had become generally accepted among government and donor partners. In December 1997, a National Public Procurement Forum and the Minister of Finance established a **Task Force on Public Procurement Reform**. Supported by the World Bank, it studied the possible procurement models and recommended to replace the legal framework and decentralise responsibility to each procuring entity while defining the procurement procedures to be followed.

The **Public Procurement and Disposal of Public Assets Act passed into law in 2003**. The Act requires all public procurement and disposal to be conducted in accordance with the principles of transparency, accountability, fairness and value for money. The law set out detailed procedural rules, whose provisions include the advertising and public display of bid opportunities, notices of best evaluated bidder and contract award. The required procedures are supported by an enforcement system that: allows dissatisfied suppliers to seek administrative review; provides for suspension of suppliers for offences; and allows disciplinary measures to be taken against public officers who commit malpractices.

The law established an autonomous regulatory body,

the **Public Procurement and Disposal of Public Assets Authority (PPDA)**. The PPDA's first steps consisted in assessing whether procuring entities have put in place the required structure and whether these bodies are carrying out their functions in accordance with the law. In 2006, based on the PPDA's assessment, new Procurement Regulations were passed, which provide for citizen access to procurement and contract information for public projects, applicable to all procurement entities. Their amendment in 2014 made the publication of call for tender notices and award notices on the PPDA website mandatory.

Currently, following a pilot phase, the e-GP is currently being rolled out with the e-GP Guidelines of 2020 stating that "the procurement process shall be carried out by a procuring entity using the electronic system".

However, the legal framework has no sanctions for non-compliance with the provisions of the Act, which renders implementation weak. The provisions are limited to disclosure of projects whose value is above a set financial thresholds and centre on tendering processes and tender awards, but do not focus on implementation information. **Even though PPDA have greatly improved the publication practice of procurement data, they depend on procuring entities to provide adequate information about their procurement processes.** PPDA monitors compliance and tries to exert pressure on PEs to improve their data publications, but in practice sanctioning of non-compliance with publication requirements remains a large gap in the implementation of open contracting policy

(AFIC, 2019b).

A recent study by CoST Uganda revealed that some government officials were still held back by some clauses on confidentiality and secrecy in the available policies and laws and were not disclosing all the required data to the public domain, even when they were willing to do so. In addition, despite the Access to Information Act 2005 and 2011 regulations promoting timely, accessible and accurate public information disclosure, these also have clauses rendering implementation ineffective. There are numerous and ambiguous categories of information that may be denied and Information Officers have not been trained and provided with the tools to implement their mandate.

Lastly, the Code of Conduct and Ethics for the Uganda Public Service is also very prohibitive of disclosure and in support of the Official Secrets Act which leads civil servants to consider themselves the custodians and protectors of government data.

Data mapping

Data availability and quality

With the launch of the Government Procurement Portal (GPP) in 2015, Uganda started to publish public procurement data in a central and systematised manner. The number of procurement processes published jumped from a few hundred to almost 12k in 2016 and 20k in 2017, with slightly lower numbers in the last two years. The data covers calls for tender and contract award and signature information, but no information on modifications or cancellations or contract implementation and supplier performance is provided. The quality of the data as in the share of key variables available remains similar over time with an average availability of around 40%. Uganda provides identifiers such as tender IDs, but no supplier and buyer IDs. It promises to provide OCDS-compliant data downloads, however, it is currently not yet fully functional (e.g. <https://gpp.ppda.go.ug/#/public/open-data/tenders> currently gives an error message (4th August 2020)).

Data systems setup

As public and international calls for procurement reforms grew louder in the early 2010s, PPDA, with the help of the World Bank, developed the GPP launched in 2015 in order to publish contract information online and to combine three different ICT platforms that were used previously: the Public Procurement Performance Measurement System, the Tender Portal and the Register of Providers (AFIC, 2017, 2019a).

At the same time, the Africa Freedom of Information Centre (AFIC), Transparency International Uganda (TI-U) and the Uganda Contract Monitoring Coalition (UCMC) with funding from the World Bank commenced a project

to enhance accountability and performance of social service contracts. Using the OCDS mapping template they conducted a mini-mapping of the GPP compared to the standard. It was discovered the portal did not satisfy the needs of some of its key users. Disclosure covered only about 30% of public agencies; and none of the districts monitored by TI-U were included. Data at the different stages of the process did not link up and key information was not published, which also made it difficult to follow individual contracts along the procurement process (AFIC, 2019a; TI-U, 2018).

In June 2016, AFIC with support from HIVOS and the Open Contracting Partnership (OCP) conducted an open contracting scoping study evaluating the GPP. The PPDA welcomed the feedback of the preliminary findings. The PPDA encouraged AFIC to carry out a full mapping of the GPP and provide recommendations on OCDS implementation. On receiving the results of the full mapping, PPDA expressed its willingness to align the GPP to OCDS but indicated needs for capacity support. AFIC and PPDA agreed to jointly fundraise to hire a developer for the alignment of the GPP to OCDS. PPDA also signed different Memoranda of Understanding (MoU) to provide a framework to the working relationship between them and CSOs like TI-U, AFIC and others in order to establish stable partnerships and sharing of information. From 2017, PPDA officially started to publish data in OCDS on the GPP, which is constantly being updated. The CSOs involved have taken the data to the next stage, e.g. TI has created an analytical dashboard which allows filtering for health-related procurement and encourages citizens to use it, and AFIC is working as well on an open data dashboard to make the information more accessible by providing key indicators of the public procurement process.

Furthermore, since 2018, PPDA has tested and recently began to operate the new e-GP system with 10 procuring entities, and is planning to roll it out to more entities and training the private sector on its usage. At the moment, the e-GP requires a log-in and thus it does not provide any public information, but if connected with GPP or another open data platform it could potentially enhance data publication.

Actors

The actors in this area are very few, it is a small but growing field. There was little interest in open contracting at the beginning because it is complicated and seems technical. The Ugandan chapter of Transparency International (TI-UG) began working on this topic in recent years and did a study on how much the civil society, public and private sector know about public procurement. It found that there are important gaps in the understanding of public procurement by politicians, procurement officials,

civil society and the public at large. The different actor groups include:

Government

The **PPDA** under the **Ministry of Finance** is the main actor with the mandate to reform public procurement and enhance its transparency. It has proven its willingness to reform towards greater transparency and has pushed for reforms, even though it does not have the power to sanction non-compliance it has managed to introduce the GPP. The PPDA has welcomed the feedback from AFIC and appreciated the civil society engagement on the GPP portal, which has led to a strong collaborative relationship between the two actors.

Civil society

The most important civil society actors pushing for open contracting include **AFIC**, **TI-U** and the **UCMC** (includes 25 member organisations many of which work sector-specific), as well as the **Anti-Corruption Coalition Uganda**. AFIC, TI-U and UCMC have been working since several years to promote value for money in public procurement through monitoring of contracts and educating the citizenry which has created a sense of social accountability in procurement. Civil society is generally considered free to operate but there are some caveats, for example public bodies' limited willingness to cooperate and to provide information. There have been cases of civil society actors being threatened, paid off or closed down when they became too outspoken or threatening for the political elite. The government is said to prefer civil society to approach them first and communicate their findings internally before going public.

Donors/international organizations

Important international actors working on public procurement and transparency in Uganda include **TI**, **Oxfam**, **Open Society Foundations**, **Hivos**, **DFID**, **Development Gateway**, **ActionAid**, with most of them working by supporting local civil society organizations that are dependent on international funding. The **World Bank** has also contributed to the push for more transparent public procurement. It worked on reforms with the government, e.g. the development of the GPP was assisted by the WB, and it funded civil society activities, such as AFIC's OCDS mapping and advocacy. Reportedly, the political elite have in recent times become more hostile to donors for funding CSOs that they see as 'anti-government'.

Accountability institutions

The most important accountability actors are the **Auditor General** and **Inspector General of the Government**, however if it comes to serious political issues, they are said to not be above influence and control according to several interviewees. They are generally more active on anti-corruption issues, auditing and investigating and less so on transparency issues. Obviously, they benefit from and

support a more transparent public procurement system but they are not among the main drivers.

Opposition

The opposition, as an actor potentially interested in promoting OC and disclosure of government spending, is interested in OC and would push the press to uncover scandals by the government. On the other hand, as one interviewee put it: "Public procurement is the main food for politicians, and government and opposition eat from the same plate." Generally, the opposition is effective within parliament but their capacity is limited, and many of the individuals are likely to lack a deep understanding of the procurement process. At the local level, the Opposition does control some councils but there is evidence that central government interferes with its autonomy, including in the area of allocating contracts (Lambright, 2014).

Private sector

While not being very outspoken about it, businesses have largely benefited from public procurement data disclosure and are said to be in favour of it.

Impact mechanisms

Political will

After a number of large-scale corruption scandals in public procurement came to light in 2012-13 (e.g. **Katosi road construction scam**), the president of Uganda demanded more accountability in public procurement, echoing public demands. As a consequence of the scandals, a number of donors halted their funding to Uganda. At the same time, the Ministry of Finance (MoF) gained a lot of power as it was assigned to lead the reform to deal with the scandal, while the Prime Minister's office lost power since it was involved in the scandal. This meant that the MoF was able to push reforms which would have been difficult otherwise.

Officially, there is government interest in general and they put in place the legal and policy framework necessary for improving procurement. The PPDA amendment 2014 made publication compulsory, and promoted transparency. They also agreed to embark on e-procurement with WB support and the MoF is described as genuinely reform-oriented by some interview respondents. However, critics say that "the government just wants to tick a box, but there is no real interest in full transparency, because certain people could lose their sources of income". This view is supported by a lack of investment into controlling institutions (such as IGG). Therefore, actual top-down pressure from the government to enforce procurement transparency is lacking. On paper (in the law and regulations), it is provided for, but in practice it is not enforced. Only symbolic support means OC cannot be implemented to its fullest potential. Some respondents suggest that no one dares touch the high-level corruption

(and those in high office have the power and influence to keep information secret); as one interviewee put it: “the big fish don’t really care about increased procurement transparency, because they believe that they won’t be harmed anyway.”

PPDA on the other hand is very active and committed to OC, but in practice, it is challenging for them to achieve proper data disclosure because the system is too big and corruption is so entrenched, that getting and publishing reliable information is a major challenge. PPDA is urging PEs to publish their data but non-compliance is not sanctioned. According to the interviews, many PEs do not want to disclose their procurement details, and the responsibilities are unclear (who should collect and publish what information and in what structure). This leads to very fragmented information, whereby they disclose only some less sensitive parts to tick the box, but there is little commitment behind it. The credibility and accuracy of information thus suffers.

The process of creating political will for improved data disclosure seems to have been mostly bottom-up driven: TI-U, AFIC and UCMC started with local monitoring initiatives in communities, but then recognized that it is very difficult to get the contracting information from the relevant bodies and therefore they embarked on improving the GPP with PPDA. They forged a very close relationship with the PPDA which is a “win-win”: the PPDA gets useful feedback, help in finding funding, technical support and the CSOs get the information, data and access to other government agencies. Regarding the technical implementation of the GPP, AFIC has been strongly involved. Now the CSOs focus on the users of the data in order to create demand for OC data, “without demand there is little value and it is hard to convince policy-makers”.

When it comes to e-Procurement, the WB was the main driver in providing funding and technical support, while its implementation rested with govt (MoF, accountant general, PPDA, NITALI) and in recent years, there were tensions between these actors that slowed down the process.

Capacity

In terms of IT capacity, there are important constraints in terms of PEs’ facilities: some do not possess a computer or internet access. In addition, the GPP has seen technical difficulties and is currently not able to connect to the server where tender data should be available for download. Nevertheless, PPDA with the initial support of the WB and the CSOs has managed to set up a functioning online portal that allows for the publication and download of procurement data.

Some interviewees lamented the low levels of professionalism among procurement officers and other staff at PEs, constraints in time and manpower as well

as resistance to change. There is data fatigue among procurement officials because they used to be three stand-alone systems that they were trained in and when GPP came about they had to learn a new system. Data entry is often seen as an additional effort and not assigned to a specific position. Sometimes there is only one person responsible for procurement who is used to working with a largely paper-based system leading to reluctance to input and upload information. Often, POs lack the understanding of the benefits of transparency and e-procurement. Nevertheless, PPDA comments that some government agencies are beginning to open up and appreciate the role of OC. PPDA has also provided training to PEs, and TI-U followed up with refresher training. Besides capacity constraints in PEs, others claim that “the actual problem, maybe even more important than capacity, is the lack of integrity – it seems that some officials specifically choose [to work in] the procurement sector for its profitability.”

In terms of proficient data users, the lack of citizen awareness on their right to information has limited the demand for public information. Most of Uganda’s citizens as well as information officers and officials in some government ministries and agencies remain ignorant about the existence of the law on access to information, its importance and implementation. Overall, the general public is more concerned about the last stages of procurement, the delivery of public goods and services, not necessarily whether the procurement was fair and transparent. In addition, the public often does not trust public information; similar to companies who do not respond to calls for tender because they assume that it is already decided who will win (based on experience with collusion and corruption).

Recommendations

- **The government should improve the framework for enforcing PEs’ compliance with data disclosure, so as to enhance data availability and quality. A reward and sanction framework that triggers compliant behaviour by PEs could be such a tool, as well as a concrete policy defining when and how entities are obliged to publish their data.**
- **Civil society could help PPDA to draft such an amendment to the PP Act and lobby it through the process of approval by MoF and Parliaments.**
- **CSOs and PPDA should continue their fruitful cooperation to enhance citizen engagement, which is where other civil society groups might come in to build the capacity of data users.**

ZAMBIA

Overall assessment

Zambia publishes OCDS-compliant public procurement data but the scope of the database is very small as only a few entities actively use the e-GP system, which has been piloted since 2016. Its use is not mandatory by law and it faces institutional resistance as well as a number of technical challenges. While an amendment to the Procurement Act to include e-GP and publication requirements is underway, its adoption has been continuously delayed since over two years, indicating that it does not constitute a political priority.

Reform strategies used

The ZPPA in an attempt to fulfill its mandate and **improve procurement efficiency and accountability drives transparency reform efforts**. OCP offered support on the implementation of an OCDS-compliant e-GP system. However, its roll-out has yet to manifest which requires changes to the legal framework that ZPPA and civil society are advocating for.

Country governance context

The Republic of Zambia gained its independence from the United Kingdom in 1964. It is classified as a lower middle-income²² country. Since 1991, it has been undergoing

major economic reforms which have spurred increased investment and trade in the country, largely driven by the copper industry. Despite government efforts to strengthen legal and institutional frameworks in the last decade, corruption and other governance challenges continue to plague Zambia. The separation of powers is considered partly ineffective as the executive influences appointments in the legislative and judiciary arms of governance.

PP profile

In Zambia, an estimated 12% of GDP is spent on public procurement (World Bank, 2018i). Before 2008, procurement was conducted centrally by the National Tender Board. With the establishment of the regulatory body of the Zambia Public Procurement Authority (ZPPA) in 2008, the procurement function shifted to the individual ministries and other government agencies. The public procurement sector has been riddled with corruption scandals in recent years, such as the case of 42 fire trucks being bought for US\$ 42 million while questions remained as to whether the trucks were in appropriate condition and whether the winning contractor was a shell company.

The reform trajectory

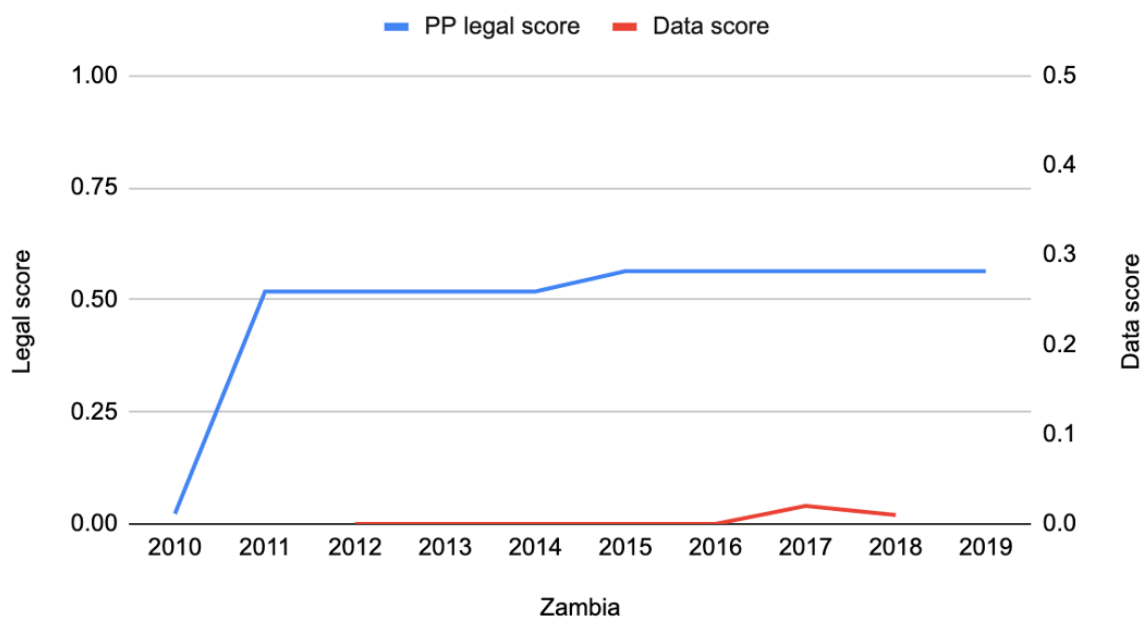


Figure 17: Development of Zambia's legal framework pertaining to transparency in public procurement and its public procurement data availability and quality score over time based on the data downloaded in May 2020 from the Zambian e-GP website.

22. GNI per capita between \$1,006-\$3,955.

Legal framework

As a complementary strand to the public reforms of the Government of Zambia in 2007, an assessment of the public procurement system was conducted in Zambia as part of the Country Pilot Programme to test the OECD Methodology to measure procurement applicability and to formulate a strategy for capacity building. During this period, public procurement in Zambia was governed by the Zambia National Tender Board Act and the central procurement body of the National Tender Board.

Partly in response to the results of the OECD assessment, the government undertook legal reforms of public procurement. The Public Procurement Act of 2008 repealed the Zambia National Tender Board Act, decentralized public procurement and created the Zambia Public Procurement Authority (ZPPA) as an independent oversight body while the procurement function moved to the various government entities. The Public Procurement Regulations of 2011 laid down the legally prescribed procedures in detail. In terms of data transparency, the Regulations contain a number of provisions on how to document and publish information on the procurement process, however it is tailored to a largely paper-based system (Matakala, 2017; own mapping).

Regarding online publication of procurement information, the Regulations state that the publication of a call for tender can take place “to the extent feasible, on the internet” and that procuring entities “may use” ICT in the procurement process. The legal provisions have not changed since, however the Ministry of Finance is currently working on revising the Procurement Act which would include e-Procurement requirements.

The Access to Information (ATI) Bill, which was developed in 2002 and then included as a government commitment as part of its electoral platform in 2011, is yet to be passed. It has recently been officially shelved and will not be considered a priority under the current government.

The enforcement of the existing laws is considered to be weak. A study by Matakala et al. (2017) on corruption in construction procurement found that the legal framework was comprehensive and adequate but that impunity and low levels of enforcement of the law contributed to high levels of corruption in construction procurement.

Data mapping

Zambia’s public procurement is still a largely paper-based system. The lack of legal requirement in combination with the low adoption of using the e-GP and the technical difficulties explain the current paucity of data available on the platform.

Data availability and quality

The dataset used for assessment was downloaded in May 2020 from the Zambian e-GP website. The dataset only contains very little data for the years 2016-2019 with a total of around 500 recorded procurement processes for the four years. For 2018 and 2019 the data covers information on all phases of the procurement cycle except for the implementation stage. The share of key variables available amounts to over 50%. The data provides tender IDs but no organizational identifiers.

Data systems setup

Since its creation, part of ZPPA’s mandate included the design and management of procurement information and data. Despite a lack of legal requirements to use electronic means for procurement, the ZPPA therefore developed an e-GP system which was provided by the European Dynamics company in 2015. The system was designed to support public procurement procedures through several sub-modules that provide various functions along the procurement process from tender to implementation, including tender notification, bid preparation and submission, online bid evaluation, contract awarding, placement of electronic purchase orders, electronic invoicing, and order tracking. From the onset, it used OCDS and ZPPA started publishing OCDS-compliant datasets in 2017. Currently, Zambia publishes monthly bulk record package downloads via the e-GP open contracting data section, however they contain very few data as described above.

Officially, full roll-out was announced for 2019, but according to ZPPA the system is still in a pilot phase in 2020 and only around 20-30 PEs are actively using it. A number of technical issues were reported to hinder the adoption such as connectivity and hardware issues within PEs as well as technical flaws of the system itself (Wikrent & Palale, 2019).

Actors

Government institutions

The **ZPPA** is the key body engaged in public procurement transparency reforms. Their mandate is strong on monitoring compliance of PEs and collecting procurement information. Nevertheless, the lack of legal backing of electronic procurement has hindered the adoption of the ZPPA’s e-GP system. The ZPPA faces a number of constraints in terms of financial and human resources. It has shown openness to cooperation with civil society, with TI-Z being a close partner. ZPPA has organized several workshops in and outside Lusaka to share information with stakeholders and has introduced quarterly press briefings to share procurement information with the public.

The ZPPA also works closely with the **Zambia Institute of Procurement and Supply (ZIPS)**, a quasi-governmental body providing training and regulating the conduct of procurement officials. It is a requirement for procurement officials to be affiliated with the Institute. ZIPS has been engaging with Transparency International Zambia (TI-Z) to discuss the inclusion of an open contracting module in the training curriculum and to help formulate for the amendment of the Procurement Act.

Oversight institutions

Zambia has an institutional system designed to combat corruption in public procurement such as the **Anti Corruption Commission (ACC)**, the **Auditor General's Office**, and the **Ombudsman**. One expert commented that these oversight institutions are strategically not given enough funding to limit their effectiveness. In addition, in recent years their leaders have often been appointed in acting capacity, limiting their powers.

As the ACC lacks capacity and funding, it works through “integrity committees” made up of volunteering civil servants within individual ministries which provide quarterly updates to the ACC on whether procurement regulations are adhered to. The ACC currently investigates procurement corruption cases one of which has led to the arrest of the Minister of Health in June 2020.

Civil society, citizens, media

The civic space dealing with public procurement is relatively small with a few organizations actively working on the topic. This includes **TI-Z** which is part of the Open Contracting for Health Initiative and works closely with ZPPA, **CUTS International** which is conducting research on the legal framework in order to comment on the amended Procurement Act once it is tabled, and the **Alliance for Community Action and Caritas Zambia** which are implementing the a project aimed at capacitating CSOs and citizens as actors for accountable public resource management. There are currently no known citizen initiatives for contract monitoring.

In general, civil society representatives described the civic space for exposing issues around procurement and corruption as shrinking. For example, in response to the fire truck scandal, six people who took part in an anti-corruption protest against the result were arrested and charged with “disobeying lawful orders,” a move described as typical of the intimidation used against government critics. On other occasions, organizations trying to expose corruption have been threatened or seen their operating licenses taken away.

Media freedom is also reported to have suffered with institutions like **PrimeTV**, the popular television station known for its critical coverage of the government, having lost its operating license “for reasons of public interest” and being forced to leave its premises in April 2020 following tensions between the government and the media

outlet.

The experts interviewed gave a mixed picture of the Zambian public's awareness of public procurement issues. While major corruption scandals were followed by public outcries and intense debates on social media, they likely do not have a detailed understanding of the procurement laws, processes and potential use of procurement data.

International donors/organizations

OCF is one of the major international actors working with ZPPA on the open contracting part of the e-GP system. Besides, **USAID** and the Swedish development agency **SIDA** has been pushing for procurement reforms in the **Ministry of Health (MoH)** and the funding it provides on the district level. With this support, the MoH directed procurements through a separate system, called NAVISION, which is an off-the-shelf supply management software sold by Microsoft. It is used for internal supply chain management, not for the publication of information. SIDA reports increasing uptake of the system in the regions it supports.

The USAID contractor **Crownagents** implements the project Accountable governance for improved service delivery (**AGIS project**) running from 2017-2022. It works with procurement officials and ZIPS to improve their training and certification, which involves understanding the legal transparency requirements.

Private sector

The private sector has in the past complained about exclusion from public tenders due to an intransparent system. In some instances, companies have raised official complaints, such as in the case of the MoH's overpriced procurement of ambulances which was halted in the arbitration court. Similarly, in 2017, the **Zambia Pharmaceuticals Business Forum** has exposed unfair procurement practices at the MoH which has led to the tender being cancelled and reopened. Overall, the private sector thus has a strong interest in a more transparent procurement system but its influence on policy-makers beyond complaining on individual cases is limited.

Impact mechanisms

Political will

Generally, the government of Zambia claims to demonstrate its commitment to anti-corruption by establishing the necessary legal framework, however much criticism is uttered in relation to the lack of enforcement especially when high-ranking politicians are involved. In addition, the passing of important legislation like the Access to Information law has been delayed since 2002.

Specifically with regards to public procurement

transparency, the leading government actor is the ZPPA, supported by the MoF, which has the intention to make procurement as efficient and transparent as possible and has shown full commitment to online data disclosure. The creation of the e-GP and its openness to cooperation with civil society such as OCP and TI-Z underline this effort. According to interviews, they recognize the benefit of working with such partners that can enhance their own capacities and provide technical expertise.

Nevertheless, experts commented that other ministries have pushed back and that the resistance to the e-GP is visible in its slow adoption by procuring entities, while the ZPPA was described as toothless as it does not have legal backing to enforce procurement data publication. The MoF has promised an amendment to the Procurement Act to include e-GP requirements since over two years, but the bill has still not been tabled in parliament, reportedly because it does not constitute a political priority. However, in other areas of Public Financial Management legislation, the International Monetary Fund (IMF) has exerted pressure pushing for reforms before granting a debt relief programme which might also have contributed to moving

the Procurement Act forward.

TI-Z has initially received largely positive feedback for its Open Contracting for Health project from senior figures in the MoH, including the Head of Procurement and the Permanent Secretary, who gave written permission for TI-Z to meet with other stakeholders within the ministry and conduct scoping study interviews.

Capacity

There are a number of capacity constraints adding to the difficulties of implementing procurement data transparency in Zambia. Most importantly, OCP found that some procuring entities lack internet connectivity and procurement officers do not even have access to a computer. They also found low levels of awareness of the e-GP and a lack of understanding of open contracting principles or the OCDS. ZPPA is working on training and informing procuring entities, however they are also working with constrained resources.

Recommendations

- **Civil society should closely monitor proposed amendments to the Procurement Act once its adoption moves back up the political agenda. Advocacy around appropriate publication requirements might be required.**
- **Given the low-tech environment in Zambia in terms of ICT availability and skills on the part of the government as well as the public, one approach to fostering open contracting would be to move away from the “high-tech” solutions of OCDS and first of all focus on initiatives that match the environment such as contract monitoring in local communities and gradually build up awareness and capacity for transparency in public procurement.**

KEY FINDINGS AND RECOMMENDATIONS FROM COMPARATIVE ANALYSIS

De jure vs de facto reform

Drawing on our in-depth research on the results and drivers of open contracting reforms in the nine selected countries, this section takes a comparative analytical approach to identify key lessons. Our analysis finds considerable variation in the results achieved to date. Kenya, Nigeria, Zambia and Bangladesh score highest in terms of their legal frameworks' requirements of transparency, but there is considerable variation in implementation among our case study countries. Uganda and Bangladesh perform best in terms of the implementation of transparency in terms of contracting data published while Zambia and Nigeria perform worst.

For all countries, the evidence demonstrates that there is a clear lag between progress in reforming the legal framework and progress in its implementation - de jure and de facto reform. In other words, legal reform is only the first step towards change. This means that CSOs should not use all their political capital on achieving legal changes, and should check that legal change is complemented with the allocation of resources and establishment of procedures to facilitate implementation. Where legal reforms have stalled, this is typically inhibiting further progress, as in Zambia and Indonesia. And although some changes in the practice of publication reform can be made without reforming public procurement laws, without legal backing, any such changes remain much more vulnerable to reversal.

Recommendation: While legal reform is in most cases critical to progress, CSOs should avoid using all their political capital on achieving legal reform. Equally important is to ensure that resources are allocated and capacity built to ensure effective implementation.

Political will vs capacity

Our analysis of drivers and blockers of open contracting reform utilized two broad categories of explanatory factors:

1. **Political will** for initiating and maintaining reform; and
2. **Capacity** and skills for instituting and implementing reform (technical and legal).

Political will

While commonly cited as the explanation for the success or failure of reforms, political will is notoriously difficult to define. One of the most useful contributions to the field recognises that **political will should be analysed in context - ie it depends on the incentives, temptations and constraints facing political leaders**. Moreover, the constraints derive not only from the design of institutions, but also from the existence (or absence) of a strong social contract with the population (Persson & Sjöstedt, 2012). We therefore use the term to indicate leadership and commitment to reform, but treat as evidence for political will not only initial public commitments, but also the allocation of resources to the pursuit and implementation of reform, the sustaining of commitment in the face of opposition from vested interests, and the ability to build coalitions that are interested in working together to achieve change.

Our analysis allowed us to identify a number of factors which were relevant to whether political will, defined in this way, was observable in our country case studies. **'Tone at the top', such as in the cases of Bangladesh, Indonesia or Kenya, is critical to reform efforts. If the message from the top leadership is that reform is a priority, this helps to convince other actors to pursue it even when confronted with obstacles.** Conversely, if high-level commitment to transparency seems to be lacking, and worse if high-level politics appears corrupt, other agencies and potential drivers of reform discern major disincentives to implementing transparency. This is a form of collective action problem, where mid-level actors lack incentives to act because their superiors are not credibly signalling intent to pursue reform.

Recommendation: Invest in persuading top leaders to make public commitments to reform.

We also found that consistent leadership in the key institutions charged with implementation is important to success. Where this did not exist, reform often lost momentum, as in South Africa, for example, where there were frequent changes in the leadership of the OCPO (appointed by the Minister of Finance and Director General of National Treasury) and the organisation's authority was weak since it was not created by law and put on a statutory footing. This undermined its role as a lead agency promoting reform and ultimately proved very disruptive. Similarly, in Nepal, frequent changes in the PPMO's leadership weakened the organisation and made it harder to engage with it in transparency reform. Firing agency heads - or appointing heads in temporary 'acting' roles are also key ways in which high-level political leaders can maximise their control over implementing agencies, allowing them to push or block reforms indirectly through their control over personnel.

Recommendation: While it is difficult for CSOs to influence

government personnel decisions, there are strategies for mitigating the risk of changes in leadership. First, build broad networks to avoid being too reliant on one individual or institution. Second, seek to put key relationships on an institutional footing - eg with Memoranda of Understanding to define commitments - rather than relying on informal ties among individuals who may leave office.

The style of political leadership in a country is also relevant to the enthusiasm with which reform is pursued.

In some countries, the legal frameworks put in place retain considerable ambiguity and uncertainty over disclosure rules. In a more authoritarian or systematically corrupt environment, this ambiguity has a chilling effect on reform, since officials fear retribution or punishment if they unwittingly breach rules by disclosing information inappropriately. This issue arose in South Africa and Tanzania, for example, while in Nepal, the lack of a pre-existing institutional culture of openness meant that embarking on an open contracting project was perceived to be a very unusual and potentially risky endeavour, requiring a particularly dedicated and open-minded leader to take it forward.

Recommendation: Where legal frameworks in a particular context are ambiguous, CSOs and government could consider developing simple educational materials to help clarify them and posting them online as a cheap, relatively accessible and potentially impactful activity.

Finally, the framing of reform can be important to generating and maintaining political will. The main learning here is that, **in some political economy contexts, framing open contracting as a way of improving efficiency and economic competition may make it more palatable than framing it as an anti-corruption tool or in terms of the intrinsic value of transparency.** The advantage of an efficiency framing is that it turns open contracting into a way of saving money which is likely to attract broad support in low-resource contexts and, if framed in this way, can attract the Ministry of Finance as a powerful sponsor. For example, in Nepal, for years the PPMO had thought of electronic procurement as a digital business process, not as a tool for analytics. Following YI's intervention to develop a pilot portal, the PPMO was able to win support from the Ministry of Finance to develop the PPIP. Recognising the efficiency benefits of open contracting is an important element of any advocacy strategy, and is likely to be particularly helpful in the coming years as countries cope with the fiscal pressures arising from the global downturn as a result of the covid crisis (and, in some countries such as Nigeria, additionally with the impact of low oil prices).

Equally, procurement can be seen as a way of developing the economy and supporting local businesses, rather than

as a tool for transparency. In general, few government officials or civil society actors in the countries studied discuss public procurement in this light, in contrast to Latin America and Europe where the role of procurement in stimulating SMEs and local economies is a core message. However, there is scope to utilise this framing more in advocacy strategies.

By contrast, framing open contracting as an anti-corruption tool can, in a systemically corrupt or more authoritarian context, alert vested interests to the threat that it poses to them and therefore lead to blocking or stalling of reform. Transparency can even be decoupled from anti-corruption, as in Tanzania. In sum, emphasising and de-emphasising different rationales for open contracting is a key strategic tool.

Recommendation: Adapt framing and advocacy messages to support the political economy context. If political commitment to openness and transparency appears weak, opt for a framing that emphasises efficiency gains of economic development benefits. Such framings can help attract powerful sponsors such as the Ministries of Finance or Economy, or private-sector alliances.

Capacity

There are several aspects of capacity that are critical to the success of open contracting reform. The most important constraint to note is that, generally, in the low- and middle-income contexts studied here, public administration is in any case strained in its ability to fulfil its functions and provide public services. Even in the most open and reformist-minded governments, transparency - whether publishing contracts data or responding to RtI requests - is often seen as a luxury to which they cannot always pay attention. Another view is that some governments deliberately limit the resources allocated to public procurement authorities because oversight of procurement is not a political priority, or simply - deliberately or not - fail to provide procurement authorities with the appropriate authority to sanction non-compliance with disclosure rules.

These capacity constraints manifest in several ways. First, many public bodies have poor record management and few have designated staff for this task. Procurement systems often remain paper-based and records of procurement transactions are in many cases inaccurate, incomplete or entirely absent. Even where data are ostensibly published online, there can be serious weaknesses in the quality and completeness of data²³.

Second, many POs lack knowledge and training in procurement. While some countries require procurement officials to receive specialist training or to regularly update

²³. For example, see our previous analysis of Tanzania's procurement data here.

their professional skills through certification processes, other countries have no such requirements. For example, in South Africa, the OCPO is responsible for modernising a procurement system that processes 1 million contracts annually, yet as of 2016, the organisation had only 68 employees in total and very few had extensive formal education in procurement or related fields such as supply-chain management or logistics. Very few were members of public procurement professional bodies, such as the Chartered Institute of Procurement and Supply (CIPS).

Third, ICT skill sets among civil servants within data-owning agencies are often poor, which slows down or hinders the process of online data publication even where the broader infrastructure is in place. These problems are often compounded by perceptions among data owners and users that dealing with data is excessively complicated and onerous. Public officials are often resistant to learning new data management systems, and data management systems built by IT experts lack an awareness of user needs. Equally, the perception that PP data is difficult to understand is a key barrier to CSO and media scrutiny, and to citizen use of data. On the demand side, there is a lack of proficient user groups that could turn data into tools for monitoring and advocacy. In some contexts, this is being addressed by providing training to these users - e.g. in Kenya, Hivos has partnered with national media to generate stories about procurement. In Nepal, following surveys and tests (conducted by YI and OCP) which found that the public lacked awareness about the impact of procurement on society and did not see PP data as useful, YI and OCP organized a data hackathon with university students. In general, the public tends to care about the outcomes of public procurement more than the nature of the process.

Political will and capacity are both necessary conditions for reform, and are not substitutes. In order to achieve success, political will needs to exist in organisations which also have the capacity - including mandate and resources - to act. In South Africa, Vuleka Mali's inability to gain sufficient access to procurement data shows that even those with real commitment also require a mandate to act or at least a supportive ecosystem if they are to achieve anything.

In situations where political will is present but capacity is lacking, the prospects of achieving progress are better (than where political will is lacking but capacity is present). Motivated reformist leaders can often find support to build capacity, either from external actors such as the World Bank, Open Contracting Partnership, or Hivos, or from local civil society actors - eg AFIC and TI-U in Uganda has provided critical technical expertise to the PPDA. Given that it can take a long time to achieve technical improvements, headway can be made on these in periods when political will is weak, and then the transparency and anti-corruption agenda - for which political will is more critical - can be pushed more if political windows of

opportunity arise at a later date. This is in some ways the story of Zambia, where the pilot e-procurement system has not been much utilised but nonetheless, it is helping to familiarise the public administration with IT systems, building important capacity that may make take-up more efficient at a later date. This pattern is more advanced in Uganda, where the development of the data infrastructure has in some ways led the process, but once in place, the data can be used for analysis that is more targeted at uncovering corruption.

Recommendation: Scale reform ambitions to the available political will and capacity in the local context. Over-ambitious plans risk losing momentum, whereas even piecemeal changes build useful skills and 'scaffolding' for future reform.

Recommendation: In situations where high-level political will is lacking, focus advocacy efforts on building up capacity, e.g., by focusing on the more technical side of putting in place e-procurement or improving data infrastructure, or by creating a cadre of public officials trained in good practice in public procurement.

Recommendation: To assist with building capacity, in addition to providing technical support, it is important to build confidence in managing data and showcasing the benefits of data analysis. This can also help build local pressure on political leaders.

Drivers of reform

Societal drivers

Across the set of cases studied here, there is relatively little popular demand for accountability and anti-corruption, or electoral pressure for transparency. The main exception is that scandals can create windows of opportunity for reform. In Uganda, for example, the Katosi road construction scam prompted public demands for more accountability in public procurement, and this prompted the president of Uganda to support reform. The Katosi scandal in Uganda also led to a number of changes in the power dynamics among external and internal actors. A number of donors halted their funding to Uganda, creating some fiscal pressure and meaning that the country was more reliant on its own resources. At the same time, the Ministry of Finance (MoF) gained considerable power as it was assigned to lead the reform to deal with the scandal, and the Prime Minister's office lost power because it was implicated in the scandal. This meant that the MoF was able to push reforms which would have been difficult otherwise. In this way, scandals can provide a window of opportunity which weaken vested interests blocking reform and increase the power of actors interested in reform. However, this should be treated cautiously, bearing in mind that scandals tend to be only a trigger for change, whereas real reform depends on

sustained pressure over time.

Nor is there much pressure from the private sector to increase the openness of procurement or widen access to contracts. This partly reflects the weakness of the private sector in general in the countries studied. Given the heavy role of the state in the economy, winning government business is often critical for company survival, but this can put companies in a very dependent and subordinate position, making them more likely to accept the informal rules of the game rather than being strong advocates for change. There are of course also companies which are aggrieved at being corruptly excluded from the procurement process and they have an interest in reform, but they tend at best to use legal procedures to make formal complaints, rather than becoming organised advocates for reform.

Recommendation: Leverage scandals to build support for reform, both with the public and with elements of government which will be interested in demonstrating that they have responded to underlying problems.

Recommendation: Engage with private-sector associations to understand the problems they face and demonstrate how open contracting can help, so as to build them up as allies and advocates.

Internal governmental drivers

Within governments, there are two main motivations for pursuing public procurement reform. First, governments may regard PP reform as a good way of making financial savings, particularly in contexts where they face fiscal pressures from being highly indebted and lacking revenues. The imperative to cut costs and make spending more efficient is often the key way of getting governments to commit to reform procurement. In Nepal, for example, civic tech company YI and global NGO OCP worked hard to convince the PPMO of the value of open contracting for their own benefit because it would help them to undertake analytics and achieve efficiency gains. Their advocacy strategies included mapping the data and demonstrating a pilot portal (similar to PPDC's Budeshi in Nigeria), engaging repeatedly personally with a diversity of individuals across PPMO departments, and repeatedly clarifying the legal situation to counter concerns that disclosing procurement information would have legal ramifications. This motivation for reform may become more salient in the coming months owing to the economic impact of the covid crisis. Moreover, it may be especially relevant in terms of healthcare spending, given the nature of the covid emergency.

Second, central government demand may see procurement reform as a way of gaining greater control over local or sectoral bodies. This may be the case in more decentralised systems, for example, where central government finds it hard to observe or control how local authorities are spending their money. Introducing

a centralised procurement system or standardising data reporting can be a way of increasing their oversight and control. This can also be linked to the budgetary pressures, if central government regards local authorities as profligate and wishes to rein in their spending (whilst not necessarily curtailing their own). In Bangladesh, this desire for the centre to exert more control over local agencies seems to have been an important motivation, although it should be noted that this approach may mean that transparency is implemented asymmetrically, with central or higher-level officials relatively untouched by increased oversight. Moreover, if political systems are very decentralised, it may not be straightforward for central governments to exert control in this way. For example, in Indonesia, the federal system makes it very difficult for the central state to impose policy on individual states, which hinders roll-out of a standardised system for recording and publishing procurement data.

Recommendation: Assess the political economy context to identify how open contracting can be framed as a solution to problems that particular parts of government is grappling with.

Recommendation: Recognise that different parts of government may have different motivations for pursuing procurement reform, and tailor advocacy messages accordingly.

External drivers

There is little evidence that international donors and lenders exert much influence on national-level political will to reform procurement. Commitments to the OGP are helpful, but mainly because they provide a benchmark against which local CSOs can seek to hold governments to account and call them out for implementation failures. The OGP's regular process of checking on progress also helps to sustain momentum. But little pressure comes from elsewhere in the international community. The 2016 London Anti-corruption summit was instrumental in getting commitments to open contracting from some countries, such as Nigeria and Kenya, but the loss of momentum after the summit, particularly with the UK government becoming distracted by constitutional issues, meant that this leverage was largely lost. This is evident from the fact that Nigeria has achieved little since making its commitment while Tanzania even took the more proactive step of withdrawing from the OGP.

The World Bank is a key resource supporting public procurement reform with capacity-building, especially with financial support for introducing new data infrastructure and technical assistance in introducing e-procurement. The Bank plays a subtle role in advocating for reform, often by concentrating on producing an evidence base that reform is needed. Thus, in several cases, mostly in the early 2000s, an assessment of the PP system by either the World Bank or the OECD was used as evidence to garner support for legal reforms e.g.

this was the case in Nigeria, Bangladesh and Zambia. Nevertheless, the Bank casts its role as one of supporting governments that have already decided to pursue reform, rather than initiating reforms in the first place. Indeed, its political leverage sometimes appears surprisingly weak, even in smaller countries such as Nepal where the Bank's extensive funds might be expected to be more influential.

The OCP, as an international NGO, plays an important advocacy role in convincing governments of the benefits of transparency in procurement systems. It often works together with the OGP and can provide capacity building and technical support. However, the OCP's preference for introducing the Open Contracting Data Standard may not be appropriate in all contexts, particularly those where local capacity is under-developed. The OCDS requires creating datasets in JSON format with an Application

Programming Interface (API), which requires considerable expertise to implement. In contexts where data skills are relatively undeveloped, e.g., in Nepal and Zambia, this level of expertise is likely to be lacking and it may be better to be less ambitious. Datasets in CSV format can be built more easily and can still yield major benefits in terms of transparency and analytical depth.

Recommendation: International donors and NGOs should coordinate at the national level, and with local CSOs, to ensure maximum impact of advocacy efforts and to target technical assistance appropriately.

Recommendation: Use the methods outlined in this report to identify relevant features of the local political economy context and use this to design an appropriate reform strategy (see Figure).

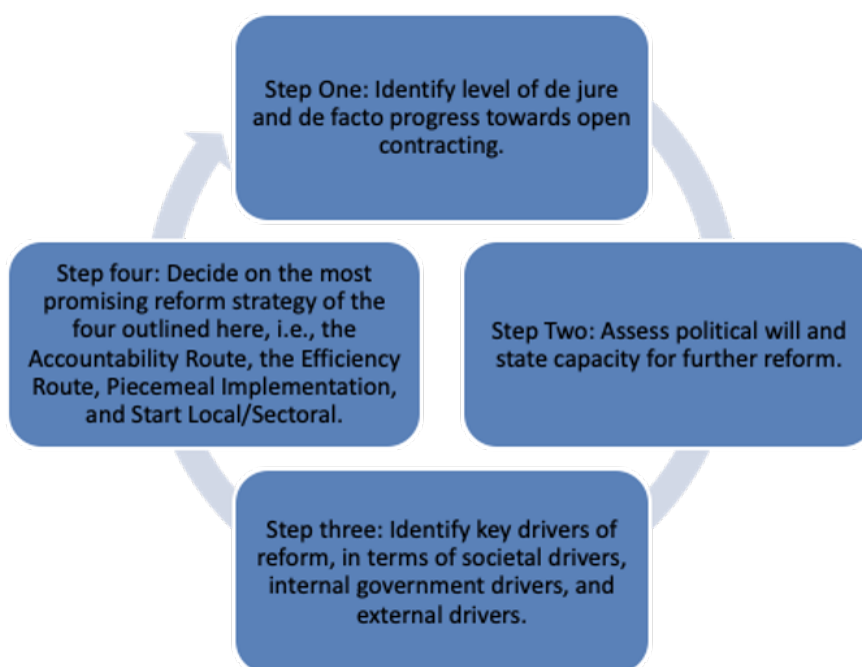


Figure 18: *How to develop an advocacy strategy in a given context*

Reform strategies

We identify four distinct reform trajectories which have yielded tangible improvements in public procurement transparency among the countries studied. We elaborate on these below with the aim of providing guidance for civil society groups seeking to tailor advocacy strategies to different contexts.

1. The Accountability Route: Transparency at the heart.

For most civil society actors, the primary benefits of open contracting transparency relate to improved accountability over government and public policy.

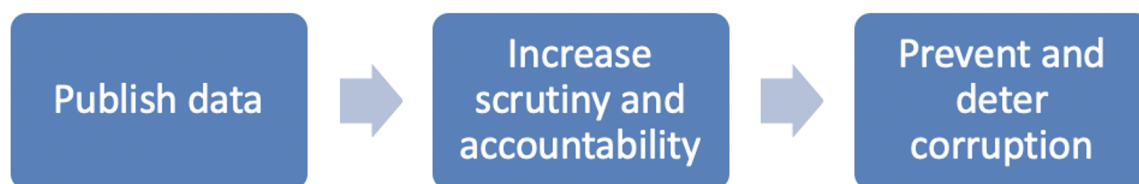


Figure 19: *The Accountability Route*

The theory is that requiring the publication of detailed information about the contracting process will improve accountability in two ways. First, the public and civil society will use the published data to monitor and scrutinise public procurement, and to hold to account governments or individual public officials who appear to have manipulated the process or used it to channel public funds to cronies. Second, public officials, anticipating this kind of scrutiny, will refrain from participating in corrupt schemes in the first place, for fear of the consequences.

Drivers

The main drivers are public demand for government accountability and anti-corruption in public procurement. This needs to be sufficiently widespread and sustained for some actors in government to pay attention and be motivated to act.

Such demand may be amplified by high-profile scandals which draw attention to the need for reform, but need to be strengthened by continuous awareness of the importance of transparency for anti-corruption.

Within government, the motivation to increase scrutiny and accountability over spending often reflects a desire for central government to better control public agencies that have either sectoral or local autonomy. The drive to improve accountability may be limited to certain areas of government.

Challenges

This reform strategy faces the challenge that reform time scales tend to be short, ranging from three to five years and popular support for transparency is also often short-lived. This can limit government attention and commitment. Hence, it is essential to build on the initial impetus of any scandal or public protest to build working relationships with the key implementing authorities such as the procurement authority.

A key challenge is that, as noted above, governments seeking to improve their control may wish to circumscribe the extent of reform, e.g., by limiting it to low-value contracts or to local government, while leaving high-value contracts or central government relatively protected from transparency. As such, it is important to lock in initial reforms. These can then provide a basis for extending reform to other areas of government at a later date when political opportunities arise.

Recommendation: Civil society's role is to champion transparency and amplify public anti-corruption demands, making the link between transparency and reduced corruption. It should also assist in providing the blueprint for reform content such as data structure, e-procurement system design, and data publication protocols.

The case of Uganda

Uganda is an example of this approach. The government of Uganda has demonstrated a longstanding commitment to improving its control over public procurement spending, and has allowed the PPDA to drive reform. The PPDA is a relatively high-capacity and professional organisation, but has also proved very open to receiving technical assistance from civil society, particularly from the African Freedom of Information Centre (AFIC).

AFIC, for its part, as well as other CSOs such as TI-U, built up trust with both the population and the PPDA through long years of local contract monitoring work. This has helped it to play a key role in the implementation of transparency in contracting. AFIC is able to offer technical support to the PPDA that helps it to fulfil its own mandate, and the PPDA recognises the benefits of working with the organisation. Among others, the transparency and data agenda also contributes to other core PPDA task such as regular monitoring of tendering practices and improving efficiency.

2. The Efficiency route: Transparency as a byproduct

In most of the cases studied here, transparency in public procurement has been pursued as part of a larger process of reforming public procurement more generally, and often within an even broader programme of public financial management reform. Public procurement sits within the wider government function of public financial management as an intermediary phase between budget management and service delivery.



Figure 20: The Efficiency Route

Because it is highly integrated with these other functions, it makes sense to pursue procurement as part of a wider PFM reform strategy and to frame its benefits largely in terms of improved efficiency and cost savings.

Drivers

Public procurement reform is driven by the government's desire to improve efficiency of public spending including by reducing PP transaction costs (e.g. time taken to run a contract awarding process) and reducing prices paid for goods, works and services. Such reform is often driven internally by the Ministry of Finance, which tends to have considerable power as well as capacity within government, making it well placed to manage reform and ensure that other actors on which it relies for implementation – such as public procurement agencies and procuring entities themselves – are both motivated and adequately resourced to play their role.

PFM reform is also an area that international donors are often happy to fund, given the broad-base development benefits and the ostensibly apolitical nature of this kind of policy.

Although transparency is not at the heart of the reform, creating efficient, electronic systems for procurement and the underlying datasets lays the foundations for accountability. Transparency can also be coupled to the efficiency agenda through the participation of suppliers, which need open tendering information to compete (although governments may argue that provision of information to business can be solved through supplier registration that is not open to the public.)

Challenges

The challenge of this strategy is moving from within government transparency to society-wide transparency of public procurement data. In addition, addressing capacity gaps is of crucial importance as many reforms with high-level support failed to deliver due to the mismatch between ambition and capacity.

Where PP reform is embedded in wider PFM reforms, this also carries risks. Broad-based reforms are more likely to disrupt more vested interests and therefore may face more spoilers and blockers, potentially derailing the reform process.

The need to integrate PP data with other data systems should not be overlooked. For example, in South Africa, progress towards a comprehensive procurement data system has been hampered by the lack of integration with other government information technology systems – most prominently, BAS (the accounting system), PERSAL (personnel), and LOGIS (logistics). In Kenya too, one outstanding problem is that PPIP is not integrated with the Integrated Finance Management and Information System (IFMIS), despite the fact that PP reform was embedded in PFM reform.

Recommendations: Civil society can play a technical support role, helping to create or test data infrastructure and analytics. In terms of advocacy, civil society can promote transparency by providing evidence that it delivers additional efficiency gains and promotes competition, furthering economic development and supporting key business actors such as SMEs.

The prime examples for this case are Bangladesh and Kenya.

The case of Kenya

One key example of this trajectory is Kenya. The country embarked on a large-scale PFM reform in 2017-18, which helped to put e-Procurement and open contracting back on the political agenda and provide political will to drive reform. When Executive Order No.2 of 2018 was passed, the PPRA was compelled to improve the Public procurement information portal ([PPIP](#)) where procuring entities are now required to upload tender notices and results each month.

PP reforms have been driven by internal government concerns to achieve savings in public spending, in recognition that large amounts of funds were being lost through inefficient and obscure procurement and Kenya could ill afford this as it is heavily indebted and has a very constrained budget. The losses were regarded as overwhelming and potentially threatening for the president's legacy.

This meant that the National Treasury was greatly interested in improving efficiency, which motivated it to provide substantial technical support to PEs. While the focus is less on ensuring external transparency than on gaining control over low-level spending, the reforms have involved significant investment in systems that publish high-quality data, albeit mainly for supporting bidding (i.e. lots of call for tenders but only very few contract awards are published). This has created a resource that can be analysed by external actors to improve accountability, even though accountability was not the initial driving force.

3. Piecemeal reform, muddling through: Shifting alliances and blockers

There are many actors involved in public procurement, from the Treasury, through Public Procurement authorities, to individual procuring entities. Managing the reform process requires buy-in from all of these agencies as well as significant resources and capacity to undertake technical changes. Moreover, reform takes a long time. All of this makes public procurement reform a major administrative challenge in itself, but they are all compounded when a key aim of reform is to reduce corruption, meaning that many of these players will have a vested interest in blocking or derailing reform.

It is not surprising then that public procurement reform is often piecemeal and muddled, but it means that this reform trajectory is also commonly observed and is worth analysing.



Figure 21: *The Piecemeal Reform Route*

Drivers

The drivers of this reform trajectory are diverse and shifting over time. Reform champions may sit in different parts of the government - such as the public procurement agency, ministry of finance, or sub-national governments - at different times. The motivations may also shift between anti-corruption and efficiency or both, depending on who is more influential and what their interests are.

Challenges

The key challenge is to ensure that successive, incremental reforms add up to a larger reform movement and move the country into a position where public procurement is more transparent. Civil society needs to maintain neutrality to allow it to support disparate actors but also to help convince those in power at any given time to recognise the value of prior reforms and results, rather than to abandon them and start afresh.

Recommendation: Civil society advocates need to closely monitor and flexibly adapt to the changing political and institutional landscape by looking for new alliances. They should be prepared to support a diverse set of actors

and seek to build coalitions among groups that have an interest in reform, even if for different reasons, so as to build momentum for open contracting reform.

Recommendation: Civil society should seek to use the changing nature of alliances to expand learning and build capacity across government, improving the overall framework for transparency step by step.

The case of Indonesia

One example of this case is Indonesia's federal government, which has committed to open contracting reforms and rolled out e-Procurement across the country. LKPP launched the Electronic Procurement System (SPSE) based on a free license for all government agencies in Indonesia. The data is inputted at the 689 different Electronic Procurement Services Hosts (LPSE) within national and sub-national government agencies. This is aggregated by the procurement agency LKPP on a monthly basis on the INAPROC portal, but data quality and timeliness is impeded by this approach.

In Indonesia, the piecemeal nature of reform has in some ways been a strategic response to the difficulty of rolling out reform more efficiently in a federal system, where each state has considerable autonomy. Anticipating that some states would resist using a centralised system, the LKPP decided that each office should have its own system. Procurement data therefore resides in each procuring entity for more than 600 and is very fragmented.

While the federal system is a barrier to speedy reform, it could have been made more efficient by introducing regulations or standards that mandate publication in open formats and by introducing a system for punishing non-compliance with use of e-Procurement and publication requirements is not punished.

While piecemeal reform is not always a result of a federal system, it is more broadly a response to situations in which power is fragmented and alliances are shifting. This makes it difficult to push through a reform in a short period of time, and requires constant adaptation to changing constellations of power and political will.

4. Start local and/or sectoral: Showcase success to persuade others

Public procurement is a politically sensitive and technically complex area where it is often difficult to gain or sustain reform momentum for a large-scale national transformation. However, in a number of the countries studied here, significant progress has been made in initiatives that focus on a particular sub-regional area and/or on a specific sector such as infrastructure. This raises another strategic possibility for pursuing reform: once success has been achieved in one discrete area,

whether that is a city or a sector such as infrastructure or healthcare, and concrete benefits can be observed, it may be easier to persuade other actors to implement reform elsewhere - and harder for political actors to deny the benefits.

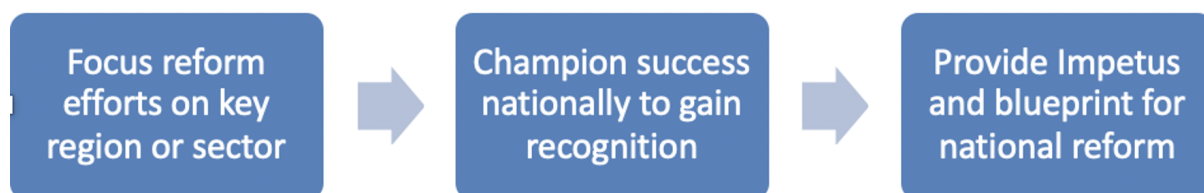


Figure 22: The Local or Sectoral Route

Drivers

This strategy tends to be driven by progressive local leaders who are personally interested in reform, sometimes because they are from opposition parties and see this as a good opportunity to showcase their policy agenda. International donors and CSOs are sometimes able to support and finance local initiatives like these even where central government support is lacking.

demand-driven, where you engage if and when someone approaches you asking for help; (b) problem-solving, where you anticipate which actors will have which needs at what time and propose solutions, e.g. looking at when a government needs to report progress on their OGP commitments such as OGP; and (c) progressive: embarking on the long journey to build citizen's voice and capacity and create bottom-up demand through local CSOs or infomediaries.

Challenges

Local ownership can make it difficult to standardise systems. For example, in highly decentralised Indonesia, the government sought to allow procuring entities considerable autonomy to design their own data publication systems, but this has led to fragmentation and inconsistencies across procuring entities. There is a tradeoff between local ownership and the ability to standardise data publication.

Recommendation: Civil society groups should be prepared to support local leaders or sectoral initiatives when opportunities arise, adapting flexibly to changes in political context. For example, engagement can be (a)

Recommendation: Keep in mind how success in short-term initiatives could be expanded to wider reform, e.g., routes to policy transfer - bearing in mind that this may be politically sensitive if reform success is associated with opposition candidates.

Recommendation: The current political context of the covid crisis means that corruption in healthcare procurement has high saliency with governments and that international donors are reorienting aid towards this issue, creating opportunities and resources to promote transparency in that sector.

Selected local and sectoral success stories

In South Africa, a number of data transparency initiatives have emerged at the sub-national level. For example, the opposition-run Western Cape province has launched its own [open tenders platform](#). This is the only province run by an opposition government which has emphasized anti-corruption as part of its governance. Another sub-national effort which also focuses on a key sector - infrastructure - is the [Vuleka Mali project](#). With central government assistance from the Treasury and co-run by Imali Yethu – a coalition of civil society organisations – this aims to make government budget data and [infrastructure procurement data](#) available, although it has faced difficulties in gaining access to the infrastructure procurement data which is inconsistently recorded.

In Kenya, in 2019, the Makueni County Government launched its own [portal](#) with procurement information for all stages of procurement processes at the county level. This was driven by a progressive county governor

with a strong reform- and IT-minded approach, but utilising resources and technical support from Hivos and Development Gateway. The county government closely involved POs as well as civil society and the public at large in the reform process, which is hailed as a success story that might inspire other sub-national reform.

In Nepal, Dhangadhi Sub-Metropolitan City has set up a sub-national open contracting data system called the Infrastructure Management System (IMS), again specifically for infrastructure. The IMS is an open contracting platform specially developed to support locally elected representatives in tracking the progress of infrastructure projects. It can also receive feedback on the projects from citizens and other stakeholders on a real-time basis. It was introduced two years ago, driven by the initiative of the mayor and his efforts to increase oversight and efficiency in public infrastructure delivery, which in turn also led to increased transparency. Success factors impacting the sub-national Dhangadhi open contracting initiative include the strong leadership from the mayor, a change of the municipality law to support disclosure, and the continuous involvement of stakeholders in the procuring entities, businesses as well as civil groups.

In Nigeria, the Kaduna state government led by a reform-minded governor, in collaboration with the PPDC, has set up its own procurement data portal since 2016. It publishes OCDS-compliant CSV and JSON datasets. The Kaduna state government also builds an e-GP system with the support of the World Bank. This is an example where political will for open contracting at the top has translated into reforms on sub-national level. The governor of Kaduna state is said to be a reform-minded politician who saw an opportunity in embracing open contracting, be it driven by a genuine interest in transparency and accountability or for reasons of political branding. This case shows that the state level provides an easier playing field for transparency reforms with smaller and less complex procurement governance systems than on the federal level.

FURTHER READINGS

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SOURCES

Primary data collected

Data mapping of all countries.

Legal mapping of Bangladesh.

Legal mapping of Indonesia.

Legal mapping of Kenya.

Legal mapping of Nepal.

Legal mapping of Nigeria.

Legal mapping of Tanzania.

Legal mapping of South Africa.

Legal mapping of Uganda.

Legal mapping of Zambia.

Key informant interviews

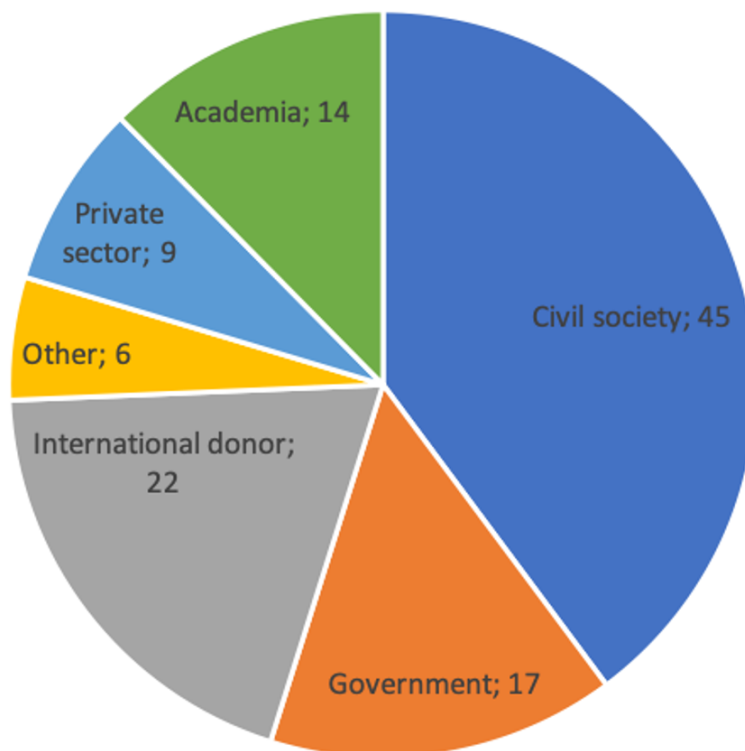


Figure 23: Distribution of all interview respondents across sectors

Breakdown of interview respondents by country:

Table 1: Breakdown of interview respondents by country and sector

Country	Actor type
Bangladesh	Civil society
Bangladesh	International donor
Bangladesh	International donor
Indonesia	Civil society
Indonesia	Civil society
Indonesia	Civil society
Indonesia	Civil society
Indonesia	International donor
Indonesia	International donor
Indonesia	International donor
Indonesia	Research/Academia
Kenya	Civil society
Kenya	Civil society
Kenya	Civil society
Kenya	Civil society
Kenya	Civil society
Kenya	Civil society
Kenya	Civil society
Kenya	Civil society
Kenya	Government
Kenya	Government
Kenya	Government
Kenya	International donor
Kenya	International donor
Kenya	Private sector
Kenya	Research/Academia
Kenya	Research/Academia
Kenya	Research/Academia
Nepal	Civil society
Nepal	Civil society
Nepal	Civil society
Nepal	Civil society
Nepal	Government
Nepal	Government
Nepal	International donor
Nepal	Other

[illegible]

Tanzania	International donor
Tanzania	International donor
Tanzania	Other
Tanzania	Other
Tanzania	Other
Tanzania	Other
Tanzania	Private sector
Tanzania	Private sector
Tanzania	Private sector
Tanzania	Private sector
Tanzania	Private sector
Tanzania	Private sector
Tanzania	Research/Academia
Tanzania	Research/Academia
Tanzania	Research/Academia
Tanzania	Research/Academia
Uganda	Civil society
Uganda	Civil society
Uganda	Civil society
Uganda	Civil society
Uganda	Civil society
Uganda	Government
Uganda	Government
Uganda	Government
Uganda	Government
Uganda	Government
Uganda	International donor
Uganda	International donor
Uganda	International donor
Uganda	International donor
Uganda	Other
Uganda	Research/Academia
Zambia	Civil society
Zambia	Civil society
Zambia	Civil society
Zambia	International donor
Zambia	Private sector
Zambia	Research/Academia

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APPENDIX

A. Legal coding template

2	Threshold - lowest PP
3	What are the minimum application thresholds for an open, competitive procurement method? (Product type GOODS)
4	What are the minimum application thresholds for an open, competitive procurement method? (Product type WORKS)
5	What are the minimum application thresholds for an open, competitive procurement method? (Product type SERVICES)
14	Publishing and record keeping
15	Does the law stipulate that electronic means is the primary method of conducting public procurement and of communication between procuring entities and tender participants?
15a	Does the law establish a single official point of access (i.e. one central online portal) for all procedures and information related to public procurement?
15b	Is there a requirement that the following tender documents must published in full? - Pre-tender information (e.g. annual procurement plans)
16a	- Call for tenders
16b	- Modification or cancellation in call for tenders
16c	- Announcement of awarded contracts
16d	- Contract details
16e	- Information on contract implementation
16f	Are these documents to be published online at a central place?
17	Is it mandatory to keep all of these records? -Public notices of bidding opportunities, -Bidding documents and addenda, -Bid opening records, -Bid evaluation reports, -Formal appeals by bidders and outcomes, -Final signed contract documents and addenda and amendments, -Claims and dispute resolutions, -Final payments, -Disbursement data (as required by the country's financial management system)

18	Are contracts awarded within a framework agreement published?
20	Is it mandatory to publish information on subcontractors (ie names) in some cases?
31	Is scoring criteria published?
35	Are scoring results publicly available?
39	Does the law specify the location for publicizing open calls for tenders?
40	Does the law specify the location for publicizing restricted calls for tenders?
41	Does the law specify the location for publicizing negotiated calls for tenders?
58	Is disclosure of final, beneficial owners required for placing a bid?
63	Is there a requirement to publicly release arbitration court decisions ?

B. Variable list used for data quality assessment

Variable name (as displayed in dataset)	Variable description
award_contractPeriod_startDate	Contract start date
award_contractPeriod.endDate	Contract end date
bidder_address	Supplier address
bidder_country	Supplier country
bidder_id	Supplier ID
bidder_name	Full supplier name
Buyer_country	Buyer's location - country
Buyer_city	Buyer's location - city
Buyer_address_streetAddress	Buyer's location - address
Buyer_id	Buyer ID
Buyer_name	Buyer Name
Buyer_type	Agency type
ca_contract_value	Contract value
contract_value_currency	Currency of contract value
cft_url	Link to the award notice
exp_compl_date	Expected completion date
tender_year	Year
nr_tendinv_ltmrfq	Number of Bidders invited for for limited tendering/request for quotation
tend_modif	Number of tender substituted/modified
tender_awarddecisiondate	Award decision date
tender_awardPeriod_endDate	Award decision period end date
tender_awardPeriod_startDate	Award decision period start date
tender_publications_firstcallfortenderdate	Call for tender publication date
tender_publications_lastcallfortenderdate	Call for tender publication end date
tender_biddeadline	Bidding deadline

tender_contractsingaturedate	Contract signature date
tender_documents.dateModified.date	Contract modification date
tender_estimatedDurationInDays	Estimated contract duration
tender.value.currency	Currency of tender value
tender.eligibilityCriteria	Eligibility criteria text
tender_estimatedprice	Total estimated value of all lots
tender_finalprice	Total value of all lots
tender_id	Tender ID
tender_proceduretype	Procurement method
tender_recordedbidscount	Number of bids
tender/procurementMethodDetails	Details on the procurement method
tender_selectionmethod	Tender selection method
tender_status	Tender status
tender_supplytype	Procurement category (services, goods, works)
tender_title	Tender title

C. Semi-structured interview guiding questions

Introduction:

- Explain research topic
- Guarantee anonymity
- Introduce interview themes
- Ask if the interviewee has any questions about the interview or project?
- Clarify interviewee's career background.

A. Actor and legal mapping

1. Who is responsible for creating public procurement (PP) rules?
2. How is the legal framework for open contracting enforced? (law implementation, monitoring, and sanctioning of non-compliance)
3. Who is responsible for overseeing procurement management and implementation? Does that include data collection?
4. Who are the leaders of the responsible agencies and how are they appointed?
5. Does this body have the authority and competency to lead a reform agenda?

B. Development of transparency in public procurement and its enablers and spoilers

6. Could you describe the development of transparency in public procurement and its trajectory so far? What were the most important developments, milestone changes in the last 10 years?
7. Were there certain reform strategies employed that have proven particularly successful? Which ones? Which were ineffective (or detrimental)?
8. Were they part of a broader programmes? (e.g. PFM, supply chain, fiscal transparency, anti-corruption strategy)
9. How is the current govt promoting transparency in the PP process?
 - a. Can you give any examples to illustrate their approach to this issue? (e.g. what commitments made, statements/policies from senior government leadership in favour of disclosure of procurement data? Implementation?)
 - b. Are there open contracting "champions", individual reformers, with a genuine interest to promote transparency in PP?
10. What do you think is driving or motivating their approaches (or keeping them from doing more)? Is there pressure from external actors? (e.g. civil society, international funders)
11. Who stands to lose and how much power they have to block transparency reform?
12. What's the level of skills and resources available for implementing transparency in procurement?
 - a. Coordination and capacity among relevant parts of govt to build infrastructure and collect data
 - b. Resources, e.g. money for IT systems, training of Procuring Officers
 - c. IT availability in PEs, IT skills of POs
 - d. Data users, ability of third parties to understand and use procurement data

- 13.** Who are the other main actors in this space?
- Are they putting pressure for more transparent PP?
 - How much power/influence do they have?
 - Do the policy-makers listen to their views?
 - Cover:
 - a. International donors
 - b. Accountability institutions
 - c. Electorate
 - d. Civil society
 - e. Opposition parties
 - f. Media
 - g. Private sector
- 14.** What is the level of civic space and media freedom in the area of social accountability, and specifically contract monitoring?

C. Any further comments? Suggestions for other people to interview?

D. Thank the respondent and end the interview.

D. Interview coding frame

1. Country context
 - a. Government approach to (PP) transparency
 - b. Political system/government style: authoritarian - democratic scale
2. PP policy-making
 - a. Change in discourse
 - b. Policy development
 - c. Policy adoption (legal framework)
 - d. Policy implementation
 - i. failure
 - ii. success
 - e. Enforcement
3. Actors & Drivers/Blockers
 - a. Civil society
 - b. Private sector
 - c. International donor
 - d. Media
 - e. Accountability institutions
 - f. Public
 - g. Government
 - i. Strength of will for OC
 01. Blockers
 02. Drivers
 - ii. Framing: Motivation for OC
 01. Efficiency, savings
 02. Control
 03. Transparency, accountability
 04. External pressure
 - a. Bottom-up demand
 - b. Donor demand
 - c. Business demand
 05. Political campaigning / opportunism
 - iii. Capacity for OC
 01. internal
 02. external
 03. Kinds of capacity needed
 - a. Infrastructure and tech,
 - b. Training of POs
 - c. Data management & centralisation of data
 - d. Collaborative networks
 - e. Champions (individual reformers)
 - f. Mid-level (informal) networks
 - g. Oversight
4. Local case studies (subnational level OC stories)

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