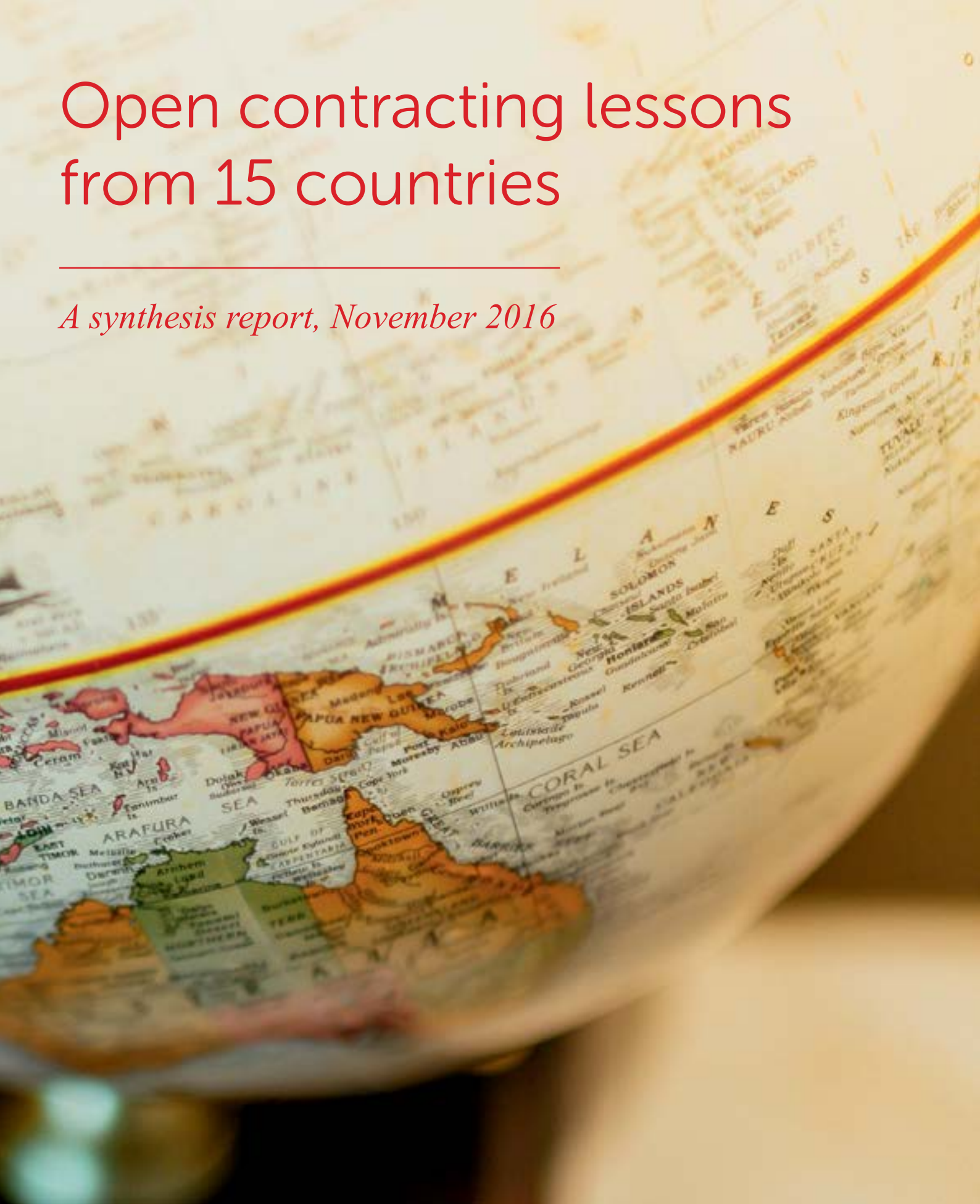


Open contracting lessons from 15 countries

A synthesis report, November 2016



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This study has been conducted within the scope of the Hivos and Article 19 open contracting program and led by the Open Contracting Partnership. This report is produced by Karolis Granickas.



INTRODUCTION

For nearly two years, government schools in the Kasungu district of Malawi faced regular shortages of textbooks, affecting students' ability to learn. A network of local civil society groups worked together to explore what was going on. At the heart of the problem was a phone and electrical supplies company that had won the contract, been paid and had failed to deliver. Thanks to the investigation, textbooks started coming to schools.¹

Similarly, the Africa Freedom of Information Center in Uganda monitors infrastructure at community levels. The Public Private Development Center in Nigeria has developed a web platform to monitor government spending. This platform, called Budeshi, which means "open it" in Hausa, is tracking contracts for health centers and school construction. Activists in Kenya and Malawi are planning to adopt this platform.

These are just a few examples of how citizens are tracking where their taxpayer dollars end up. How do we accelerate these projects so they can achieve national scale? At the heart of the challenge is unearthing and analyzing government contracts with private companies.

Globally, governments spend an estimated US\$9.5 trillion each year through contracts with private companies,² but how, when, and where this money is spent is often not publicly available. Even when such information is open to the public, it can be difficult to make sense of because it is not timely, available in an accessible format and carries restrictions on reuse.

Open contracting can transform public procurement through better data, analysis and engagement with businesses and civil society. It involves:

- disclosure of open data and documents about the planning, procurement, and management of public contracts; and
- engagement with civic and business users of information, leading to improved accountability and redress by government agencies or contractors through acting on the feedback received.

Open contracting has gained a lot of recent momentum and more than 20 countries and cities are working towards publishing open contracting data, and on business and civic engagement.

Pledges are a good start, but real results on the ground are what count. Data have to be put to good use to drive social change. To that end, Hivos and Article 19 have launched a global program to empower local civil society groups, journalists, and other so-called infomediaries³ to discover and use open contracting information.

Hivos and Article 19 kicked off that program by working with the Open Contracting Partnership to conduct scoping studies with local researchers in 15 countries; namely Bangladesh, Ghana, Guatemala, Honduras, Indonesia, Kenya, Malawi, Myanmar, Nepal, Nigeria, Peru, the Philippines, Senegal, Tanzania, and Uganda.

¹ - G. Sendugwa, Open contracting In Africa: towards proactive disclosure, <http://www.open-contracting.org/2016/04/29/open-contracting-africa-towards-proactive-disclosure/> (last accessed 1 December 2016)

² - <http://www.opencontracting.org/data%2ADstandard%2ADannouncement> (last accessed 29 November 2016)

³ - The Hivos and Article 19 under the open contracting program defines infomediary as an actor in society that can take complex information and package it or contextualize it so that it can be understood and used by wider segments of society.

OPEN CONTRACTING ASSESSMENTS IN 15 COUNTRIES

Lesson 1: There is a clear appetite for open contracting information across infomediaries in all 15 countries

In all countries surveyed, it was easy to identify organizations who are eager to use contracting information to monitor procurement and improve public governance, even when the data are difficult to come by. In almost every country, there were at least a handful of relevant groups who have the potential to use procurement data. Collectively, this adds up to a sizeable international community of infomediaries who could become future open contracting champions.

There are also existing monitoring initiatives to which open contracting could add value. In Indonesia, for example, civil society has developed the website www.opentender.net to publicly release information about tenders and awards. The bilingual site allows users to search and analyze data – shared by the national procurement agency (LKPP) under an MoU agreement – on more than 460,000 procurements. It also features news on government projects and corruption cases. However, the platform only covers tenders done through the e-procurement system, which account for around 30% of all procurement in Indonesia. The organization Indonesia Corruption Watch uses the site to profile high-value procurements and their susceptibility to corruption. Similar efforts exist in Nepal, Nigeria, the Philippines, and elsewhere.

Non-government actors are already working to raise awareness of irregularities in procurement and pushing for systemic reforms. For instance, the policy think tank IMANI Ghana reviews procurement issues and gives advice on ensuring accountability within the process. It has a diverse membership that includes representatives of civil society, the private sector, government and academia, which gives the group a significant level of political influence. As one Ghanaian put it: "When IMANI releases a statement, the government listens."⁴ One of the group's recent exposés involved a deal to supply equipment for printing driving licenses to the Driver and Vehicle Licensing Authority (DVLA). Payments to the supplier exceeded those set out in the contract by more than GHC 6.3 million (around US\$1.5 million), according to IMANI. Ghana's Attorney General ordered the DVLA to terminate the agreement, which was due to end in 2022. Although IMANI does not mention open contracting as a term in its public advocacy, the group uses the public's interest in high-profile cases like the DVLA scandal to make policy recommendations, including the need for increased disclosure for subcontracts, to close loopholes in the procurement law that enable corruption, and for the formation of an independent, multi-stakeholder body to act alongside the procurement authority.⁵

Private sector representatives are using public contracting information to advance their own business interests and make the market fairer. The Honduran Chamber of Industry and Construction, for example, collects public procurement information, which is published on the Honducompras site, and uses it for their own market studies and quarterly statistical analysis, which are included in their regular newsletters and the magazine CHICO.⁶ Similarly, the Malawi Confederation of Chamber of Commerce and Industry said that they used procurement information for monitoring and identifying potentially "unfair" awards. The confederation does so at the request of its members, when they believe the awarding of a procurement contract was suspicious.

PARTICIPATION

Participation can be encouraged through a clear program implemented by governments to engage with external stakeholders, through functioning feedback redress mechanisms, and through building capacities of infomediaries to use data.

POLICY

Policy enables open contracting when the commitment is found in national strategic documents (i.e. OGP national action plans), government leaders show visible support for open contracting, and there are mechanisms created for infomediaries to access contracting information.

LAW

Laws enable open contracting when they recognize the right of the public to access information related to the planning, procurement and implementation of all types of public contracts. Legislation should also grant citizens the right to participate in all stages of public contracting, through consultation, observation and monitoring.

INSTITUTIONS

Institutional set-up is strong when there is a responsible agency with sufficient legal and political weight and competency to lead on open contracting issues and there is an existing inter-agency data management mechanism in place.

DISCLOSURE

Disclosure enables reuse when it follows a unified data schema, such as the OCDS that offers a structure for the release of information related to the planning, procurement and implementation of public contracts.

Open contracting at a glance

The research looked at public contracting holistically, covering policies, legislation, institutions, disclosure practices and engagement mechanisms.

These studies were designed to foster insight into current levels of openness in public contracting, to highlight entry points and challenges for open contracting, and to help identify allies and champions.

This report attempts to summarize some of the key lessons learned, drawing on the findings of comprehensive country reports. It does not try to compare the contracting systems of different countries, and only uses country examples as illustrations. Short summaries of the findings from each country are included as an appendix to this report.

⁴ - Interview with staff of the Ghana Anti-Corruption Coalition conducted during the scoping study research in Ghana.

⁵ - Full press article found at <http://citifmonline.com/2016/01/23/183892/> (last accessed 29 November 2016).

⁶ - See: <http://www.chico.hn/index.php/servicios> (last accessed 29 November 2016)

In all countries surveyed, the media was recognized as a key infomediary “cluster” that is highly influential, because of its outreach capacity and relatively high levels of public trust. In Kenya, for example, the assessment noted the power of the media to expose issues to public scrutiny and “shame” the government into action. In particular, The Nairobi Law Monthly has broken several stories on alleged corruption in public procurement, involving the standard gauge railway project, a national police tender for security surveillance equipment, and a contract to drill hydrothermal wells.

The vast majority of countries surveyed had similar high-profile scandals involving suspicious public procurement deals. Misspending scandals inevitably affect public trust in not only public procurement systems, but trust in government as a whole. Procurement is widely seen as a government’s main risk across the studies, so public authorities have an opportunity to restore trust by disclosing contracting data and responding to the demand for procurement information.

Lesson 2: Actions speak louder than words when it comes to political commitments

High-level political endorsement is a crucial first step in many open contracting reforms, but pledges are useless if not followed up with actions.

All 15 countries have made commitments to greater transparency in public governance through national strategic “planning” documents or by joining international initiatives, such as the OGP, COST, and EITI, or by including the commitment to a political party’s programs and often supplementing these with statements before the media from high-level leaders. Four countries (Ghana, Kenya, Nigeria, and Peru) have explicitly committed to open contracting in an Open Government Partnership (OGP) national action plan or through pledges made at the 2016 UK Anti-Corruption Summit. For example, Ghana’s OGP national action plan for 2016-17 includes open contracting and contract monitoring. At the UK Anti-Corruption Summit, the president signed a statement outlining Ghana’s commitment to exploring ways to improve openness and transparency in public procurement. President Mahama said that Ghana would work towards making government procurement “open by default” – starting by implementing the OCDS⁷ for high-value contracts and contracts in the oil, gas, and mining sector. The government also pledged at the summit to work towards the enactment of a new Public Procurement Act.⁸

Although statements like these can serve as a catalyst for political will, there is little evidence that they have led to concrete actions in any of the countries surveyed so far, with the exception of Nigeria, which has already developed a concrete open contracting implementation action plan and partnered with the Open Contracting Partnership, for instance.⁹

Local infomediaries and open contracting champions in the public sector are seen as playing a critical role in holding politicians to their word. For example, in Nepal, leaders within the Public Procurement Monitoring Office have continuously supported, and proactively worked towards, opening public contracting. They have spearheaded the development of a practical open contracting action plan, which is set to be implemented in 2017-2018. The plan encompasses a wide range of actions, such as the full disclosure of contracting data, engagement with key stakeholders, and capacity building efforts for both government and other users of contracting information. This illustrates the importance of identifying and empowering individuals, in and outside government, who will drive open contracting efforts in practice to ensure that political commitments are fulfilled.

Lesson 3: Smart, targeted legislation can boost engagement and monitoring in contracting

The legal framework of most countries lays a general foundation for openness, but specific legislation and implementation is often lacking. Although publishing basic documents, such as tender notices, is a legal requirement in all countries surveyed, none have adequate legislation for disclosing and accessing data on the full contracting process – from planning through to implementation – or for citizen engagement.

In the Philippines, freedom of information (FOI) is a constitutional right and the country passed a new procurement law¹⁰ in 2003, which consolidated all previous procurement regulations. It includes citizen participation in policy making and all stages of the procurement process. The new law and its accompanying rules also clearly set out what contracting information should be published and acceptable timeframes for doing so. However, attempts to pass a FOI bill that would support the constitution have been unsuccessful to date. And when it comes to publishing timely information about contracting, compliance is generally perceived to be lacking, with information often incomplete or outdated. While CSO monitoring is allowed under the law, there is no funding mechanism. Combined with other factors, such as patchy data, this has contributed to low public engagement in monitoring overall.

In Peru, where no law specifically refers to civic participation in public contracting, the study found that civil society does not engage in public procurement except in a watchdog role, reporting potential acts of corruption to authorities. There are provisions for the release of contracting data in both an access to information law and a public contracting law, but available data is often incomplete and published a long time afterwards. Geography also plays a factor; with the exception of some rare initiatives, the farther away from the capital, Lima, the more difficult it is to access any information. In these more remote regions, stakeholders reported, information is more likely to be considered sensitive and its use restricted.

Despite these gaps, legislation on the right to access contracting information – as part of the constitution, a FOI bill or procurement laws – has given citizens an invaluable channel for ensuring their right to engage in public contracting. For example, in Ghana, where access to contracting data is guaranteed by a general FOI provision in the constitution, representatives of a group called Citizen Ghana Movement approached the courts in 2015 to gain access to records for a GHS 3.6 million transport ministry contract for re-branding public buses. The group believed the price was inflated and that single-sourcing had been used without justification.¹¹ The courts granted them access to some of these records, but the absence of legislation regulating the associated costs meant they were charged exorbitant fees to do so.¹² This is the first known case in Ghana where nondisclosure of procurement records was judicially challenged. Although the investigation is ongoing, the scandal has already led to the resignation of Ghana’s transport minister and sparked a public debate about the prevalence of single-source contracts.¹³

In Kenya, the right of citizens to access information is enshrined in the constitution, anti-corruption legislation, and other key laws that have implications for public procurement. An access to information bill was also signed into law in September 2016. The laws¹⁴ explicitly support citizen participation in governance, especially in service delivery and public finance management. Kenya has an engaged and vibrant civil society with a large number of topic-based NGOs, such as Transparency International Kenya, the National Taxpayers Association (NTA), the Kenya Ethical and Legal Network on HIV and AIDS (KELIN), the Institute for Law and Environmental Governance (ILEG), networks of the Kenya Civil Society Platform on Oil and Gas (KCSPOG), the Extractives Sector Forum (ESF), and many others. Some stakeholders interviewed said that Kenya’s rich CSO community could be attributed to laws that enable civic participation, especially in public governance.

Lesson 4: Working e-procurement systems provide more accessible and timely data

In countries with functioning e-procurement systems, data is considerably more accessible and useable, although disclosure practices across the board are generally weak. For example, in Indonesia, citizens can access information about public procurement through a number of e-procurement systems, depending on the contracting phase: (1) planning data is published on the SiRUP website: <https://sirup.lkpp.go.id/sirup>; (2) contract formation and awards data is published on the national open tender portal, INAPROC: <https://inaproc.lkpp.go.id/v3>; and (3) data on the progress of overall contract activities is published on the Monev Online website: <http://monev.lkpp.go.id/>. All three websites are owned and managed by the country's main public procurement agency, the LKPP.

Most countries publish some information about procurement planning, tender notices and awards, but face significant challenges in presenting that data in useful formats in a timely manner. Some 10 countries publish information on procurement planning, albeit incomplete, while 14 countries publish some information on awards. All countries publish information about tender notices, although some of them (such as Myanmar or Malawi) do so through newspapers rather than electronically.

Replacing paper-based procedures with e-procurement systems can help to lower the barrier for private sector to participate in public procurement. However, when used solely for procurement processes, e-procurement systems largely benefit those interested in participating in tendering processes, and may be of less value to stakeholders whose interest lies in other aspects of contracting. For example, the Bangladesh government uses an e-procurement portal (www.eprocure.gov.bd), that publishes some information about contracts and lists debarred tenderers. But it does not publish information about all five procurement stages. The Guatemalan e-procurement portal Guatecompras discloses some information about annual procurement plans and implementation reports. However, that information appears to be narrow in scope and often highly outdated.

Data is not available in well-structured and open formats, limiting opportunities for other stakeholders to actively monitor contract implementation and there appear to be no active organizations engaged in monitoring public contracting at the local level in both Bangladesh and Guatemala.

That said, open contracting is not only an approach for digital systems. Disclosure practices should be adapted to user needs and capacities, prioritizing information that matters the most. The Open Contracting Principles can help with prioritising disclosure processes and working out what engagement may most suit local users. For example, paper reporting can be done via the media or posted on noticeboards at relevant institutions. In Ghana and Tanzania, tender notices are published in daily or weekly newspapers. In Myanmar, two of the leading newspapers, The New Light of Myanmar and The Mirror, publish information on awards in both English and Burmese.¹⁵

Lesson 5: Lack of standardization leads to patchy data publication and a lack of joined up data along the contracting chain

A lack of a unified data "model" or schema when collecting, managing and disclosing contracting data appears to be a significant challenge faced by every country in the study. All countries publish some type of contracting information (mostly tender notices and procurement plans), but are far from publishing information that conforms to the Open Contracting Data Standard (OCDS). Data are not provided in a structured, machine-readable format, nor in a timely manner, with the exception of a small amount of information published in Honduras, Indonesia, and the Philippines.

Unified standards, such as the OCDS, are designed to make it easier to manage and release contracting information, and to link up data across different agencies. This provides more opportunities to reuse the data and makes monitoring of public procurement simpler. A data standard can be combined with business intelligence tools to extract insights that can help make government spending more effective and efficient. One of the better data management systems covered in the study, the Philippines' Government Electronic Procurement System (PhilGEPs), publishes around half of the data recommended by the OCDS.

In countries where there is some data available, there are examples of how civil society is stepping up to use that data to develop tools to monitor contracting. In Nigeria, a civil society organization called the Public and Private Development Centre has partnered with the Pan-Atlantic University and the Premium Times Centre for Investigative Journalism to develop a tool that publishes and links up data on procurement, budgets and the delivery of public services. The initiative, Budeshi (www.budeshi.org), demonstrates the benefits of opening up contracting data in compliance with the OCDS, allowing them to track delivery of contracts for primary health care centres. Budeshi serves as a pilot for citizen engagement mechanisms that can be scaled up later by stakeholders in Nigeria, including the government. The team behind Budeshi are now actively engaging with the government on its new e-procurement portal, into which the government has committed to integrating the OCDS data schema.

⁷ - More on the Open Contracting Data Standard can be found here: <http://www.open-contracting.org/data-standard/> (last accessed 1 December 2016)

⁸ - Ghana Statement at the London Anti-Corruption Summit: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522707/Ghana.pdf (last accessed 1 December 2016).

⁹ - Ibid.

¹⁰ - Government Procurement Reform Act of 2003 (RA9184), Philippines

¹¹ - Media article about the scandal: <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/Smarttys-bus-branding-Sole-sourcing-approval-sought-after-contract-award-437188> (last accessed 1 December 2016).

¹² - Interview conducted during the scoping study research in Ghana with the acting Executive Secretary, Ghana Anti-Corruption Coalition.

¹³ - See <http://af.reuters.com/article/topNews/idAFKBN0U70CL20151224> (last accessed 27 July 2016).

¹⁴ - Provisions found in the Kenyan Constitution, the County Governments Act and the Public Finance Management Act.

¹⁵ - See: <http://www.moi.gov.mm/npe/nlm/> and <http://www.moi.gov.mm/npe/km/> (last accessed 1 December 2016)

The Open Contracting Data Standard is a user-friendly and flexible tool that structures information about the planning, procurement and implementation of government contracts to encourage its publication for reuse and innovation. It describes what, when and how to release data and associated documents at different phases of the contracting process from planning to tender to award to implementation and completion of public contracts.

It ensures that partners across the world can gain access to joined up data, rather than facing silos of disconnected contracting data. The standard enables developers to build tools that will deliver value-added services to the private sector, such as more efficiently matching small business with opportunities, and applications for citizens groups to monitor service delivery. It also provides a benchmark for good practice in disclosure, offering a framework for government to progressively collect and publish their information. It is not a pass or fail standard but encourages progressive publication and sharing of information.

The Open Contracting Partnerships runs a free global helpdesk to assist publishers with producing and sharing this information.



Lesson 6: Disclosure does not automatically lead to use

Some countries see little reuse of data, despite disclosing better information. In Uganda, for example, key information on central and local government procurement is published in a useful format and a timely manner on the government procurement portal. However, the research found no formalized monitoring and little engagement in Uganda. A similar issue was identified in Ghana and Peru.

Infomediary organizations will be key to bridging this gap between information and analysis, especially if this can be targeted towards the key user needs of other constituencies to make the data meaningful and relevant to them. This will also be reinforced if governments can proactively create opportunities for other users of "their" data. In the Philippines, for example, the government has found innovative, practical ways to engage people in data disclosure activities, such as creating tools to help monitor public procurement and organizing hackathons.¹⁶ A 2014 "Procurement Hack" brought together developers, designers, policy leaders and others to create web-based and mobile apps to make bidding processes more efficient and to open up procurement processes to the public. The event was organized by various government agencies and the company Globe Telecom. It produced several useful tools to, for example, help track the progress of government infrastructure projects by collecting images from the public, help the Philippines' e-procurement system (PhilGEPS) develop accurate budgets based on data intelligence, or help spread the word about open tenders via social media. Several Philippines civil society organizations are also using contracting data to monitor procurement related to medicines, schools, and roads. Detailed case studies of CSO and fiscal monitoring in the Philippines have been conducted by the Global Initiative for Fiscal Transparency¹⁷ and the Partnership for Transparency Fund¹⁸.

Lesson 7: ICT and open contracting capacities among public officials need strengthening

Government officials are not yet aware of the value of open data and open contracting in procurement and contracting in most of the countries studies. Three countries were found to have used the term "open contracting" and to have publicly cited its benefits, and even then, this was done by high-level policy leaders with little follow through among middle-level executives. Only Nigeria was found to have made progress with open contracting with a degree of coordination and engagement between government departments and with civil society.

Even in countries where policy leaders understand the importance of open contracting, there is a need to raise awareness of the approach among public officials who are responsible for policy implementation. Public procurement is almost always a shared responsibility of multiple public agencies, and it is unrealistic to expect reforms without a shared understanding of the benefits that such changes can bring, and without coordination between them.

Some countries could use existing fora for such activities. In Uganda, for example, there is an Inter Agency Forum (IAF) for coordinating all anti-corruption government institutions, chaired by the Directorate of Ethics and Integrity (DEI). Anti-corruption agencies have used the IAF to work together in designing and implementing national anti-corruption strategies, and to promote reforms. One of Uganda's leading administrative bodies for public procurement, the Public Procurement And Disposal of Public Assets Authority, participates in this forum and could use it to promote open contracting and its benefits.

It is very clear that basic ICT skills and a limited knowledge of data management and open data will be significant barriers to surfacing better contract information, and that programs to support info-

mediaries will also have to support government capacity as well. For example, in Myanmar, internet penetration is just under 3%.¹⁹ While introducing and establishing the e-procurement system in Bangladesh, the Central Procurement Technical Unit gave technical support and training to government officials to improve their ICT skills in managing e-procurement processes. While the system has started off on the right foot, a recent World Bank report²⁰ indicates further capacity training in Bangladesh's public sector is necessary. Ongoing support from international donors is vital in working to close the ICT skills gap among civil servants.

Lesson 8: Limited capacity of infomediaries is a challenge everywhere

All countries appeared to have a weak infomediary base that typically has little understanding of how to monitor public spending, a low awareness of open contracting, and limited capacity to monitor public procurement.

For instance, in Guatemala, Malawi, Myanmar and Peru, there seems to be no systematic reuse of procurement data, beyond a few fragmented individual efforts to cover stories of public interest. There are only a few examples of contracting information being reused in other countries.

Various challenges were cited by local stakeholders including:

- Lack of technical capacity to work with data – instances where infomediaries had sufficient technical capacity to obtain and reuse open contracting data existed in only a few countries, including Indonesia, Nepal, Nigeria and the Philippines. The other countries identified this issue as a key capacity gap.
- Lack of expert knowledge on public procurement – this is a common challenge in most countries, with notable exceptions in Indonesia, Nepal and Nigeria. In particular, there appears to be low awareness about the relevance of public procurement, and low understanding of the legal framework and rights on accessing contracting information. In Peru, for example, most infomediaries included in the research were not familiar with the term “open contracting” and had doubts about its exact meaning.
- Lack of understanding about public spending in general – for example, in Myanmar, there were no infomediaries identified who worked on public spending issues.
- Lack of resources to engage in demanding monitoring work – many CSOs included in the research mentioned funding as a key obstacle to engaging in emerging fields. Only a few well-established organizations, such as Indonesia Corruption Watch, Indonesia Procurement Watch, and Transparency International chapters in a few countries, appeared to have sufficient resources to sustainably engage in public contracting monitoring.

As noted, there are some infomediaries reusing procurement data effectively in other countries, such as Indonesia, the Philippines, and Uganda, although the general infomediary landscape can be strengthened.

One of the most important infomediary groups is the media. In some countries, even established media companies seem to lack the sufficient knowledge and capacity to engage in public procurement monitoring. Stakeholders in Kenya for instance, said that even though major outlets have broken stories related to corruption in public procurement, such as the Anglo-Leasing scandal, the media is perceived to be opportunistic: it is effective in making noise but not necessarily in following up on issues or converting initial pressure into longer term reforms.

Lesson 9: Government, business and civil society need to work better together

There are some existing partnerships between government and civil society in public contracting, although collaboration among different stakeholder groups needs strengthening in all countries, and businesses, especially smaller businesses, are often not at the table. In Nepal, for example, the government introduced a Local Governance and Community Development Program (LGCDP) to focus on reducing corruption and misappropriation of resources through public participation. Fine tuning procurement and implementation procedures is one of the program's priorities. Since transparency and accountability are the key indicators of the LGCDP, the program includes compulsory public hearings, citizen score cards, and social audits of every project that is either completed or still underway. Although there is no evidence yet about demonstrated long-term impact, the LGCDP has helped to strengthen Nepal's procurement and financial management systems and led to the creation of an action plan to reduce fiduciary risks in public spending.

Nepal's main public procurement oversight body, the PPMO, has also recently partnered with a local technology activist group, Young Innovations, and the OCP on a three year open contracting project that will integrate the OCDS into Nepal's e-procurement system. The plan puts a strong emphasis on cross-sectoral collaboration between the government, CSOs and the private sector in developing a procurement system that is responsive to the needs of all procurement stakeholders.

In open contracting and public spending, a collaborative partnership between government, civil society and the private sector is often referred to as the “golden triangle”. Nigeria's Budeshi project has the potential to become a powerful practical application of this model.

Ukraine, a country not covered in the report, provides perhaps the best evidence of why all stakeholders should play an active role for open contracting to work. The Ukraine government is responsible for setting general rules and protecting information; businesses are responsible for providing services to contracting authorities and suppliers through commercial marketplaces where procurement is carried out; and civil society and academia, including Transparency International Ukraine and Kiev School of Economics, are responsible for managing business intelligence modules and developing risk-management methodologies. This cooperative approach has significantly improved trust among all key stakeholders and could be replicated elsewhere.

¹⁶ - Press release: <http://data.gov.ph/kabantayngbayan-procurement-hack/> (last accessed 29 November 2016)

¹⁷ - <http://www.fiscaltransparency.net/resourcesfiles/files/20150706115.pdf> (last accessed 1 December 2016)

¹⁸ - <http://ptfund.org/wp-content/uploads/2015/05/Case-Study-Babas-Foundation.pdf> (last accessed 1 December 2016)

¹⁹ - OECD Open Governments Review, Myanmar <http://www.oecd.org/mena/governance/Open-Gov-Review-Myanmar.pdf> (last accessed 29 November 2016)

²⁰ - Public Procurement Reform Project II : P098146 - Implementation Status Results Report : Sequence 16

CONCLUSION & RECOMMENDATIONS

Although there is a strong appetite to use contracting information, there are few successful examples yet of active and sustained use with real impact by stakeholders outside of perhaps three of the countries studied (Indonesia, Nigeria and the Philippines).

There are clear positive opportunities. Civil society is actively campaigning for greater public transparency and accountability, journalists are using public documents to expose corruption in procurement, governments are beginning to make policy commitments to open contracting and to open government, and e-procurement systems are helping to improve the quality and availability of data.

There are also major challenges. There is a poor understanding of public contracting systems and a lack of capacity – be it technical skills, money or time – to conduct monitoring. Gaps in policy and legislation are preventing people from gaining access to data and documents that are valuable and timely. Institutions that oversee procurement do not have formalized mechanisms to get feedback from businesses and citizens that could help them to fix problems in the system.

These gaps need bridging and a focus on infomediaries seems like an apposite and targeted way to achieve that.

These challenges are by no means unique to the countries mentioned here of course. Open contracting innovators from around the world – be they government, civil society, business and/or technologists – are already getting together to bridge these gaps. The recommendations below attempt to reflect this wider global knowledge and insight:

1. Proactive infomediaries can drive open contracting reforms

Citizen projects, such as Budeshi in Nigeria, show how infomediaries can initiate reforms by demonstrating the value of joined up contracting information in and outside of government, and demonstrating the value of contracting information to other users who care more about the delivery of the service than the process by which they are delivered. The bridging role that infomediaries can play between other actors is clearly important, but it requires them to be proactive and opportunistic to reach out to others. The Budeshi team first built a relationship with the Universal Basic Education Commission in Nigeria and delivered a service of real value to their objectives to prove the wider value of open contracting to others. This role clearly requires a reasonably high level of government buy-in, so infomediaries will need to build trust as well as technical capacities of others.

2. Commitments are nice but action is what really counts

Several of the governments in this study have made rhetorical commitments to issues such as open contracting or public monitoring of procurement, yet implementation is very patchy meaning that a clear follow-up plan is vital. This means ensuring policies for key data-owning agencies are developed and cross-institutional data management and release mechanisms are created. Public contracting reforms can involve many different actors in government meaning that cross-government coordination is all the more vital. Civil society plays an important role in advocating for the implementation of high-level political pledges by putting pressure on government agencies to fulfill their promises.

3. Embedding open contracting into wider procurement or contracting reforms tends to be more successful than a stand-alone transparency effort

In line with the Open Contracting Global Principles, governments should ensure that laws require the following information to be published: (a) procurement plans, (b) tender notices, (c) bidding documents, (d) award notices (including non-competitive contracts and stipulating winner, price, and reasons), and (e) full contracts (including technical specifications and implementation details).

Governments should consider publishing information in an open data schema like the Open Contracting Data Standard to ensure that data are published in a shareable, reusable, machine-readable format.

Laws and their practical guidance should enable infomediaries to track the planning, procurement and implementation of public contracts. Governments, infomediaries and others should also create sustainable feedback mechanisms or regular forums, that would ensure that user needs and feedback is gathered from stakeholders to inform disclosure policies.

4. Proof of concept

In countries with lower disclosure and low data and tech capabilities, infomediaries can step up and demonstrate the benefits of better disclosure and joined up contracting data with their own initiatives and prove the concept to government.

5. Collaboration between government, business and citizens is vital and precious

Governments should recognize the eagerness of external stakeholders to engage in public procurement monitoring as an opportunity to achieve their own strategic goals, such as reducing corruption, cutting government spending, and ensuring market fairness. To help create that kind of collaboration, infomediaries need to be able to show how contracting data can help to tackle common challenges. Stakeholders are best engaged, of course, early in reform efforts to foster buy-in and local ownership.

6. Open contracting reforms will take time and focus

Public contracting is complex as it touches just about every government function. Reforms will take time and the team involved needs to be prepared to learn and iterate. Open contracting reforms have tended to be most successful when they have focused on core user needs and identified a clear path to meet those. It is probably better to do a few things well and make sure that data is of high quality, timely and relevant for a few core fields before trying to implement every aspect of the OCDS.

7. Analytical insight can be of real value to users but needs to be put in their terms

Capacity building is clearly vital and can embed opportunities for sharing and learning to bring government and civil society together. Governments seeking to improve policies with data intelligence solutions and strong analysis are interested in more eyes on contracting systems and extensive use of contracting information, which translates into better feedback to improve spending effectiveness. Analytical insights can be of high value to non-government users too, and can reinforce interest in using contracting data, but quality insights come from those with capacity. Governments should do all within their power to build infomediary capacities to access and use contracting data in a meaningful way and apply outcomes of data use to respond to user needs.

