

# Making the Case for Open Contracting in Healthcare Procurement

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**The Pharmaceuticals & Healthcare Programme** is a global initiative based in Transparency International UK. The Programme's overall goal is to improve global health and healthcare outcomes for the benefit of all people, of all ages. It aims to achieve this by reducing corruption and promoting transparency, integrity and accountability within the pharmaceutical and healthcare sectors.

Acknowledgements: We would like to thank the Omidyar Network, the Open Contracting Partnership and the Crown Agents Foundation for their generous financial support to make this research possible.

We would also like to thank those who participated in the Expert Advisory Group: Gavin Hayman (Open Contracting Partnership), Kate Hargreaves (Crown Agents Foundation), Zoe Reiter (Transparency International Secretariat) and Eva Anderson (Transparency International's Defence & Security Programme).

Author: Lucas Amin

Editor: Michael Petkov, Transparency International's Pharmaceuticals & Healthcare Programme

Design: Philip Jones, Transparency International UK

Illustration: Arnold and Pearn

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Published January 2017.

ISBN: 978-1-910778-64-7

Cover photo: Arnold and Pearn © Transparency International UK

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# Executive summary

Healthcare and public procurement both suffer from high levels of corruption and the point at which they converge, procurement within healthcare, is an acute vulnerability that is routinely exploited. But governments and civil society organisations are now taking action to protect the lives of citizens by implementing open contracting.

The proposition behind open contracting is that procurement reform requires a broad base of participation from outside government. Businesses must be able to compete for contracts and make sense of the market. The communities directly affected by procurement, and the groups and people that represent those communities, are often better placed than government to independently monitor the procurement process. To facilitate this participation, governments must publish useful, timely and accessible information about the procurement process.

Healthcare and anti-corruption efforts share a common principle: prevention is better than cure. In the long term, open contracting offers a route for governments to move from the procurement status quo of corruption, waste and inefficiency, to clean contracting, in which fairness, integrity and efficiency are the norms.

This report first outlines some of the major challenges in healthcare procurement before explaining how open contracting works and how it can support reform. Section two introduces different approaches to open contracting that have been used around the world. Finally, section three presents case studies of successful implementation from Honduras, Nigeria and Ukraine.

Enthusiasm for open contracting is growing in the international community. Open contracting helps governments meet the public sector integrity and transparency pledge in the G20 Anti-Corruption Action Plan 2017-2018, by promoting integrity and transparency in public contracting and achieving it through citizen engagement and the use of open data.

The Action Plan discusses addressing sectors that are vulnerable to corruption, which evidently includes public procurement and healthcare. This perhaps explains why four governments, Argentina, Malta, Mexico and Nigeria, pledged to introduce open contracting into their health sectors at the UK Anti-Corruption Summit in May 2016.

## Open contracting leads to better healthcare for citizens

The benefits of open contracting extend beyond combating corruption. The three case studies in this report show that open contracting also helps to achieve better value for money, improve the business environment and lead to innovations in the monitoring of service delivery.

- 88 per cent: the amount of the Honduran drugs market controlled by 10 companies
- 36 per cent: the percentage of dedicated funds that actually materialised into operational health facilities in Nigeria
- 35 per cent: the savings achieved in Ukraine when three companies or more placed bids for contracts

## It's all about participation

Transparency is a not an end in itself, but a means of securing engagement from civil society and the private sector. The disclosure of procurement information is only valuable to the extent that it is used. The aim of open contracting is to improve procurement outcomes by widening participation. Many governments persist in viewing procurement transparency as a political or technical fix – when achieving reform requires continuous engagement. To achieve systemic change and make the transition to clean contracting, governments must participate too by absorbing the lessons learned and taking appropriate action.

## International organisations and civil society are helping governments

Designing effective transparency throughout the procurement process is a complex task but policymakers need not reinvent the wheel. Civil society organisations including Transparency International and the Open Contracting Partnership, provide technical resources, guidance and support to governments and civil society. Governments are also now using United Nations (UN) agencies and international health non-profit organisations to help them administer the procurement of pharmaceuticals.

# Acronyms and abbreviations

<b>AIDS</b>	Acquired immune deficiency syndrome
<b>AJS</b>	Association for a More Just Society
<b>AntAC</b>	Anti-Corruption Action Centre
<b>ART</b>	Antiretroviral therapy
<b>CSO</b>	Civil society organisation
<b>E-procurement</b>	Electronic procurement
<b>EU</b>	European Union
<b>FOIA</b>	Freedom of Information Act
<b>HIV</b>	Human Immunodeficiency Virus
<b>IP</b>	Integrity Pact
<b>MoH</b>	Ministry of Health
<b>NGO</b>	Non-government organisation
<b>NHS</b>	National Health Service
<b>NPHCDA</b>	Nigerian Primary Health Care Development Agency
<b>OCDS</b>	Open Contracting Data Standard
<b>OCP</b>	Open Contracting Partnership
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PAHO</b>	Pan American Health Organisation
<b>PAU</b>	Pan Atlantic University
<b>PHC</b>	Primary Healthcare Centre
<b>PPDC</b>	Public Private Development Centre
<b>PPP</b>	Public-Private Partnership
<b>PTCIJ</b>	Premium Times Centre for Investigative Journalism
<b>TB</b>	Tuberculosis
<b>TH</b>	Transformemos Honduras
<b>TI</b>	Transparency International
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Programme
<b>UNFPA</b>	United Nations Population Fund
<b>UNICEF</b>	United Nations International Children's Emergency Fund
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>UNOPS</b>	United Nations Office for Project Services
<b>WFP</b>	United Nations World Food Programme
<b>WHO</b>	World Health Organisation
<b>WTO</b>	World Trade Organisation

# Case study findings

## Honduras

### In Honduras, the detection of corruption led to government reforms:

- A coalition of civil society organisation (CSOs) detected that shell companies were used to manipulate market prices. Although 214 companies were licensed to provide drugs, 83 per cent had never won a public contract and many only existed on paper. In reality, 10 companies controlled 88 per cent of the market.
- The CSOs discovered that the Health Minister had misused state of emergency rules to purchase 57 per cent of the 405 Honduran essential medicines from a single supplier, without competition. The prices were up to 41 per cent higher than international averages.
- Procurement data was used to conduct further investigations. The additional evidence gathered helped to prove charges of theft, fraud and bribery in the storage and distribution of medicines at a government warehouse.

The Health Minister resigned and paid a fine in court, the warehouse manager was convicted and the government has now reformed the way it buys medicines. A bank, the UN and local civil society now play active roles in tendering, payment, quality control and oversight processes.

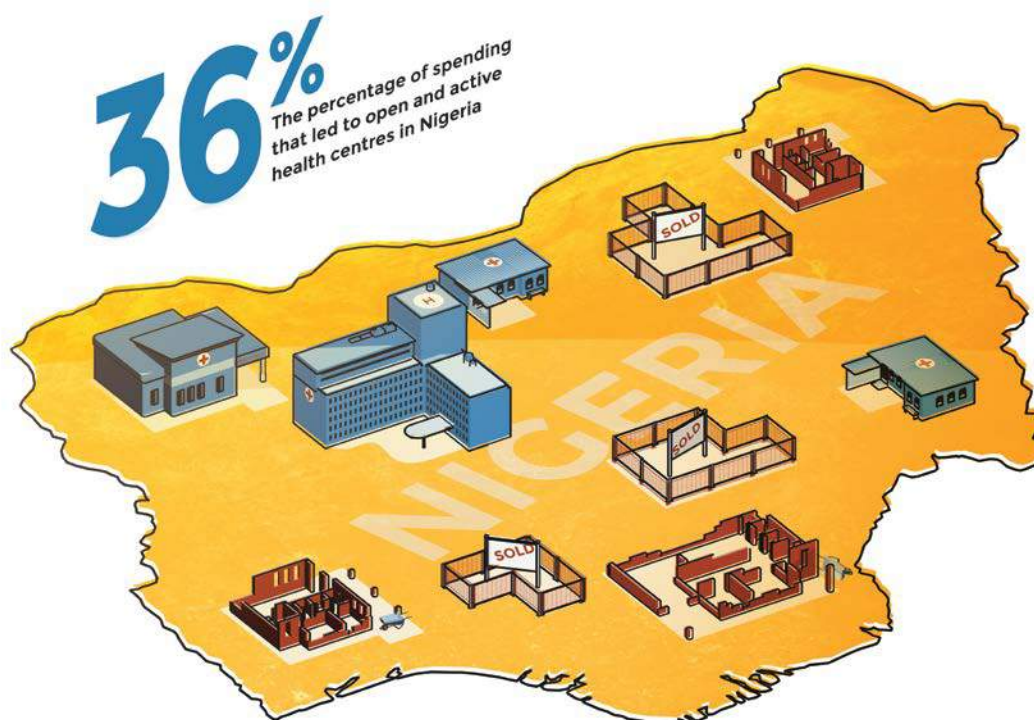


## Nigeria

### In Nigeria, civic monitoring helped to correct poor public policy:

- A CSO, a university and a newspaper collaborated to follow the money through the procurement cycle in the construction of 40 Primary Healthcare Centres (PHCs). They discovered that only 36 per cent of expenditure led to operational facilities.
- PHCs were bought for less than their budgets, which the Nigerian government claims are efficiency savings. But only five of the seventeen PHCs with the largest 'savings' (of 33 to 54 per cent) were operational, which suggests funds may have been misused.
- According to Nigerian law, bidders must participate in open and competitive tendering. But 26 of the contracts, won by 26 different companies, were all within one naira of 21,986,893, which suggests that tenders were not in line with procurement law.

The Health Minister subsequently announced the construction of 10,000 new PHCs and the Nigerian government has pledged to use open contracting in their procurement.



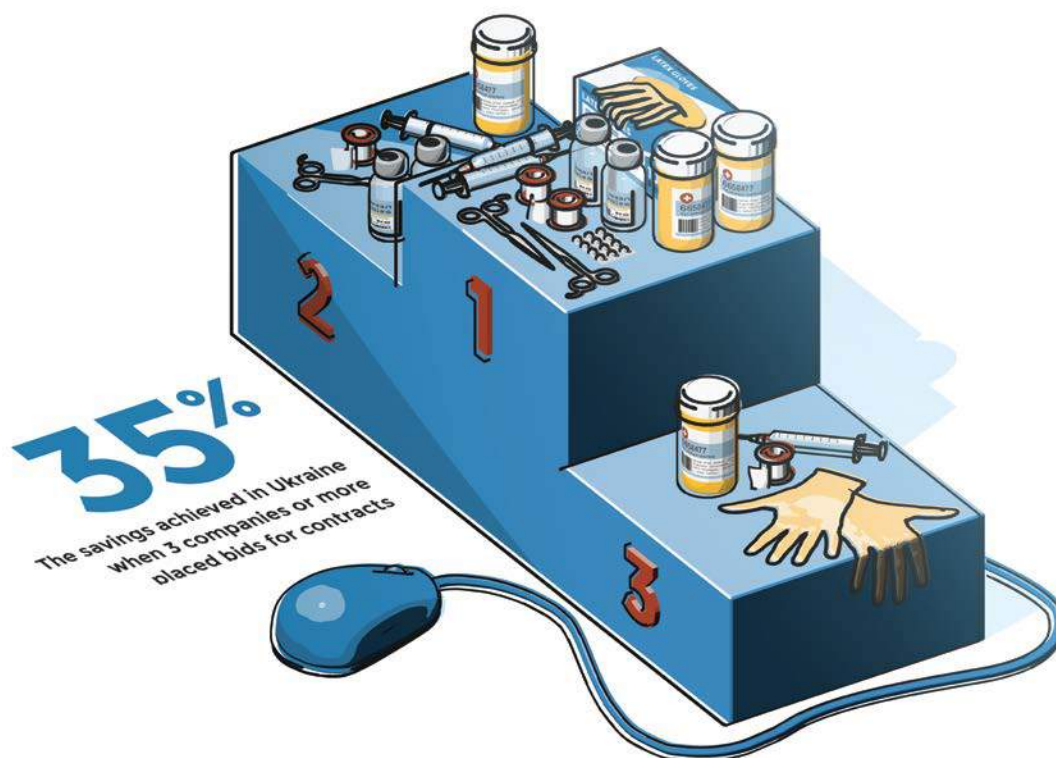


## Ukraine

### In Ukraine, competitive markets drove better value for money:

- The government's central e-procurement system, ProZorro, helped more than 2000 healthcare organisations that use it save an average of 15 per cent on all their procurements. Where three companies or more bid for contracts, healthcare organisations saved an average of 35 per cent.
- ProZorro levelled the playing field for business by digitising and simplifying procedures, which encouraged competition for public contracts. Now, using the detailed and publicly available market data, analysts are devising ways to stimulate even greater competition.
- The systemically corrupt Ministry of Health achieved savings of 38 per cent by outsourcing its oncology drug procurement to health systems specialist Crown Agents. United Nations International Children's Emergency Fund (UNICEF) and United Nations Development Programme (UNDP) also procured a range of drugs for the Ministry and saved 18 per cent and 10 per cent respectively.

The use of ProZorro, which was developed by volunteers and piloted in government departments, is now a legal requirement for all public bodies. Further contracts to purchase drugs for the Ministry of Health have been awarded to Crown Agents and United Nations (UN) agencies.



# Recommendations

## **Governments must:**

- Maintain continuous dialogue with affected communities, civil society and business to ensure that disclosed information is useful to stakeholders.
- Create participation channels throughout the procurement cycle for communities affected by procurement.
- Publish healthcare procurement information based on existing standards and principles, such as the Open Contracting Data Standard and Open Contracting Global Principles.
- Collect and disclose complementary accountability datasets, such as registers of beneficial ownership and political donations.

## **Civil Society must:**

- Devise alternative methods to make procurement information accessible and usable when strong open data principles are not adopted by government.
- Play to its strengths by innovating with data and finding new ways to monitor the procurement process.
- Work closely with affected communities to monitor and report irregularities throughout the procurement cycle, including the pre-tendering phase.
- Act boldly to create alliances with reform-minded government officials and other civic actors, such as journalists and academics.

## **Business must:**

- Actively participate in dialogue with civil society and government on open contracting design and express its needs from an early stage.
- Take advantage of the business intelligence that open contracting creates to access new opportunities and enter new markets.
- Report corruption or unfairness in the procurement process to government and civil society organisations.

# 1. The case for open contracting

## Procurement, corruption and healthcare

Procurement accounts for around 50 per cent of governments' total expenditure in low- and middle-income countries,<sup>1</sup> while in high-income countries it is closer to 30 per cent,<sup>2</sup> according to the World Bank and Organisation for Economic Co-operation and Development (OECD) respectively. Given the vast sums of money tied up in procuring infrastructure, goods and services by the state, it is not surprising that the OECD cites procurement as governments' greatest corruption risk.<sup>3</sup> In 57 per cent of the 427 bribery cases concluded under the OECD Anti-Bribery Convention, bribes were paid to win public contracts.<sup>4</sup>

The public cost of these bribes is difficult to calculate reliably but the United Nations Office on Drugs and Crime (UNODC) estimates that corruption may reduce the value of a public contract by "an average of 10-25 per cent."<sup>5</sup> The cost to human health and life, while also hard to accurately assess, should not be forgotten.

Meanwhile, the healthcare sector has many corruption vulnerabilities. It has seen more corporate settlements under the US Foreign Corrupt Practices Act, a key anti-bribery law, than any other sector, except natural resources, since 2008.<sup>6</sup>

There is no global dataset on procurement corruption in healthcare but individual cases are all too easy to find. In 2016 alone, a company selling sanitisers to over 150 Romanian hospitals was found to have watered down the substances by up to 90 per cent, rendering them medically useless.<sup>7</sup> In China, 125 suspects are under investigation after officials allegedly accepted bribes in exchange for purchasing vaccines that were not fit for use.<sup>8</sup> In Hungary, police are investigating a company for allegedly falsifying public procurement documents to win a health clinic construction contract.<sup>9</sup>

In high-, middle- and low-income countries, public procurement is also blighted by wastefulness, mismanagement and inefficiency, as well as corruption.<sup>10</sup> In practice it can be difficult to differentiate between corruption, waste and inefficiency in healthcare procurement. In an effort to be useful to policy makers, this report describes how the burden of all three can be relieved.

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<sup>1</sup> <http://www.worldbank.org/en/news/press-release/2015/11/18/many-developing-countries-can-improve-public-services-through-fair-and-open-procurement-practices-says-wbg-report> [Accessed: 12/12/2016].

<sup>2</sup> <http://www.oecd-ilibrary.org/docserver/download/4215081ec042.pdf?expires=1479378232&id=id&accname=guest&checksum=CC050521D00079900C6BE19838339DAA> [Accessed: 12/12/2016].

<sup>3</sup> <http://www.oecd.org/gov/ethics/public-procurement.htm> [Accessed: 12/12/2016].

<sup>4</sup> Organisation for Economic Co-operation and Development, 2014. OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials, p.8.

<sup>5</sup> UNODC, 2013. Guidebook on Anti-Corruption in Public Procurement and the Management of Public Finances, p.1.

<sup>6</sup> <http://fcpatoday.com/fcpa-enforcement-database-launch/#overview-reports/> [Accessed: 12/12/2016].

<sup>7</sup> <https://www.theguardian.com/world/2016/may/26/romania-great-antiseptic-dilution-scam-spreads-fury-and-infection> [Accessed: 12/12/2016].

<sup>8</sup> <http://www.fcpcablog.com/blog/2016/5/26/jerry-fang-china-authorities-investigating-bribery-in-vaccin.html> [Accessed: 12/12/2016].

<sup>9</sup> <https://www.occrp.org/en/daily/5844-hungary-occrp-partner-investigation-sparks-police-probe> [Accessed: 12/12/2016].

<sup>10</sup> Open Contracting Partnership, 2013. Open Contracting: A New Frontier for Transparency and Accountability, p.1.

The World Health Organisation (WHO) research suggests that the healthcare sector spends trillions of dollars every year for little benefit. In a major review of healthcare financing the WHO found that “a conservative estimate suggests 20–40 per cent of total spending is consumed in ways that do little to improve people’s health”.<sup>11</sup> The WHO outlines ten leading causes of inefficiency and five are, fully or partially, procurement issues. These include:

- paying higher than necessary prices for medicines
- use of substandard and counterfeit medicines
- overuse or supply of equipment, which can be induced by suppliers
- inadequate health service infrastructure
- corruption and waste

Procuring decent medicines, quality facilities and suitable equipment are keystones in the delivery of effective healthcare. Reforming the supply of these goods to governments could ensure that the 20 to 40 per cent of wasted spending, between US\$1.4 and 2.8 trillion, is used more productively.

But deciding what to buy, at what price and from whom is a difficult job. Healthcare providers need access to stocks of several hundred medicines and a wide range of non-durable goods, which are all continually depleted and renewed. Meanwhile, the technical complexity of medical devices and health facility construction processes create further challenges. Before exploring how open contracting can help, it is worth exploring these three elements in more detail.

## Medicines

Twenty-three per cent of global public health spending is on medicines, which suggests an expenditure of around US\$1.66 trillion, with low- and middle-income countries spending a greater percentage of their budgets than their high-income counterparts.<sup>12</sup>

The price of purchasing medicines varies enormously across the globe. In Ghana, the cost of Ciprofloxacin, an antibiotic used to treat pneumonia, is eight times the international reference price, according to data collected by Health Action International and analysed by Civio. Although price inflation of 800 per cent is hardly good value, it is preferable to the cost of the drug in Italy or Kuwait where it is respectively 30 times and 100 times the reference price.<sup>13</sup> Price disparities affect high-income countries too. The same study shows a US\$1000 pill in the United States costs US\$320 in Spain and US\$554 in France.<sup>14</sup> While comprehensive price comparison should take into account multiple and complex factors such as the volume of the purchase, logistics costs and exchange rate fluctuations, poor value for money can also be driven by corruption.

Corruption and other poor value for money drivers can occur before, during and after the pharmaceutical tendering process. In pre-tendering, regulatory compliance procedures can be abused to restrict the number of authorised drugs or suppliers, to help companies sell medicines at higher prices and improve their market share. Some pharmaceutical companies have also been known to induce officials to add drugs to formularies and essential medicines lists.<sup>15</sup>

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<sup>11</sup> World Health Organisation, 2010. The World Health Report - Health systems financing: the path to universal coverage, p.71-72. [http://www.who.int/whr/2010/10\\_chap04\\_en.pdf](http://www.who.int/whr/2010/10_chap04_en.pdf) [Accessed: 12/12/2016].

<sup>12</sup> World Health Organisation, 2011. The World Medicines Situation 2011 – Medicine Expenditures, p6.

<sup>13</sup> <http://medicamentalia.org/access/prices/> [Accessed: 12/12/2016].

<sup>14</sup> *ibid.*

<sup>15</sup> <http://www.pharmacompliancemonitor.com/pharma-industry-prosecution-trends-the-expansion-of-corruption-enforcement-in-the-global-market/9299/> [Accessed: 12/12/2016].

During tendering, officials can purchase medicines at above market rates or subvert tender procedures in exchange for bribes. Through false invoicing or changing contract agreements, corruption can also occur after tenders have closed.

Poor value for money in the medicine market is also driven by “widespread lack of public access to information about the pharmaceutical sector (e.g. medicines pricing, information on quality and suppliers etc)”, according to an eight-year study of 20 countries by the WHO.<sup>16</sup> Government bodies may not understand their own commercial positions and weaknesses, because they do not collect and analyse procurement data effectively.

## Medical equipment and devices

Medical equipment and devices refer to a range of products from non-durable goods such as syringes, bandages and soap, to machines used in the diagnosis and treatment of diseases. They vary in size, cost and complexity; consider an x-ray machine, a MRI scanner and a pacemaker, for example.

Like pharmaceuticals, there are opportunities for bribery and influence embedded throughout the medical devices procurement chain. The WHO states that “[t]oo often procurement policy is distorted by the marketing pressure of equipment manufacturers”.<sup>17</sup> This undermines the utility of devices because proprietary devices are often incompatible with one another and have different maintenance and operational requirements. Using multiple medical device systems can be burdensome and lead to shortages of the expertise and stock needed to use them.

The procurement of medical devices carries similar corruption risks to pharmaceuticals. The European Commission’s 2013 Study on Corruption in the Healthcare Sector found that 28 per cent of all cases in EU member states concerned medical equipment, with common cases including:

- overpricing of equipment and payment of kickbacks
- bribery of officials to favour the purchase of a particular brand
- the false certification of equipment (devices do not in reality match technical specifications)<sup>18</sup>

The technical complexity of medical devices increases the risk of corruption and overpayment. Healthcare facilities, particularly small ones, often have insufficient institutional knowledge about the value and technical specifications of devices. This makes it difficult to understand commercial and technical value during the procurement process and hard to detect overpricing, supplier favouritism and false certification in oversight and audits.

The procurement of medical devices in low- and middle-income countries is wasteful. The WHO estimates, “that at least 50 per cent of medical equipment in developing countries is either partly usable or totally unusable. In sub-Saharan Africa, up to 70 per cent of medical equipment stands idle”. The WHO cites “mismanagement of the technology acquisition process, and a lack of user training and effective technical support” as reasons.<sup>19</sup> This highlights the importance of strategic procurement and the need to ensure that the purchase of devices is accompanied by the procurement of necessary expertise.

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<sup>16</sup> World Health Organisation, 2013. Evaluation of the Good Governance for Medicines programme (2004–2012): Brief summary of findings, p.7.

<sup>17</sup> World Health Organisation, 2010. The World Health Report - Health systems financing: the path to universal coverage, p.65. [http://www.who.int/whr/2010/10\\_chap04\\_en.pdf](http://www.who.int/whr/2010/10_chap04_en.pdf) [Accessed: 12/12/2016].

<sup>18</sup> European Commission, 2013. Study on Corruption in the Healthcare Sector, p.63.

<sup>19</sup> World Health Organisation, 2010. The World Health Report - Health systems financing: the path to universal coverage, p.66. [http://www.who.int/whr/2010/10\\_chap04\\_en.pdf](http://www.who.int/whr/2010/10_chap04_en.pdf) [Accessed: 12/12/2016].

## Infrastructure and construction

Infrastructure plays an integral role in healthcare provision and according to the OECD the construction of facilities accounts for up to 10 per cent of national health budgets.<sup>20</sup> But the construction industry is also highly prone to corruption. The OECD's Foreign Bribery report, which uses a dataset of 427 prosecutions, found that 15 per cent of all cases were related to construction (second only to natural resources at 19 per cent). World Bank research describes the industry as one of the most corrupt in the world due to close ties to government and non-standard production processes, among other factors.<sup>21</sup>

Corruption or poor planning in the procurement of healthcare facilities creates infrastructure that does not meet tender specifications, is not fit for purpose or is not accompanied by funding for staff and equipment. For example, a hospital with a high infectious diseases burden must have build specifications that promote adequate hygiene and quarantine. When one or more parts of the construction procurement process are poorly executed it can have long-lasting effects that undermine effective healthcare delivery.

Clearly corruption vulnerabilities in the procurement of medicines, medical devices and infrastructure can result in the purchase of unneeded, ineffective or expensive items. With an awareness of these challenges it is time to explore what open contracting is, how it can reform the procurement process and how it can ultimately improve healthcare outcomes.

## What is open contracting?

Open contracting is an approach to public procurement that uses government transparency to foster participation between public bodies, business and civil society. The collaborative aim is to improve all stakeholders' understanding of procurement processes and, through this, boost the integrity, fairness and efficiency of public contracting.

When governments make procurement information accessible, businesses can compete fairly to win contracts and civil society can monitor the process to identify irregularities and investigate corruption. Government can improve its understanding of its own procurement processes, correct markets through regulatory changes and punish corrupt actors through enforcement. Cheaper, fairer and more honest procurement improves health outcomes.

While the premise is relatively simple, designing systems that work is more complex. This report describes a range of existing open contracting methods, but none of them are silver bullets. Successful open contracting requires committed participation from the "golden triangle" of stakeholders described above – government, business and civil society.

The open contracting approach recognises that government transparency alone does not improve procurement outcomes. Information disclosure is only meaningful when it enables the private sector to compete for business and gives civil society the ability to monitor and investigate. Transparency in open contracting diverges from both a rights-based, compliance approach, such as freedom of information, and a top-down model of proactive data-disclosure, such as open data publication schemes. In open contracting, the demand of data users is a guiding design principle, which organises the supply of government information. Identifying and

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<sup>20</sup> <http://www.oecd.org/gov/ethics/procurement-healthcare.htm> [Accessed: 12/12/2016].

<sup>21</sup> Kenny, C, 2007. Construction, Corruption, and Developing Countries, World Bank Policy Research Working Paper 4271, p.2.

consulting stakeholders who want access to procurement data secures their participation, and is the first and most important step in the open contracting process.

Open contracting transparency extends through every stage of the procurement cycle, from pre-tendering to service delivery. Since every stage of the process is vulnerable to corruption and mismanagement, it follows that each must be opened up for analysis and reform. Disclosing joined-up data, which allows users to monitor activity in each stage of the procurement cycle and follow the money through it, ensures effective participation. A failure to provide joined-up data can badly compromise analysis. For example, tendering may appear fair and competitive, but analysing this stage in isolation will not reveal whether suppliers were prohibited from registering to tender, or whether the terms of the contract were actually honoured.

## What are the benefits of open contracting?

Evidence suggests that open contracting can combat the challenges faced by stakeholders in healthcare procurement and ultimately improve healthcare services. TI recognises four broad benefits of open contracting:

- combating corruption
- achieving value for money
- improving the business environment
- better monitoring of service delivery

These benefits share overlaps and synergies. For example, combating corruption will deliver value for money, which can also be achieved through the monitoring of service delivery. With that in mind, some features and examples of each benefit are briefly outlined below.

### Combating corruption

Open contracting shows who is buying what, from whom and at what price, as well as provides information about unsuccessful bids and bidders. Quantitative analysis of these simple transactions shows supplier performance and activity over time. It can reveal patterns and anomalies, which might indicate over-pricing and kickbacks or collusion between competitors; linking this information to other datasets can confirm such suspicions. Open contracting also helps to ensure that companies on watch-lists cannot win business when they are prohibited from competing.

#### Example

In Indonesia, the Open Tender platform analyses the metadata of major public contracts, which is shared by the National Procurement Agency, and runs a rudimentary analysis based on the contract winner, budget, cost, date of award, and other variables to detect potential fraud. It is a simple system that has achieved effective results. In 2012, the algorithm detected a corruption risk in a contract to supply medical devices to hospitals in Banten province. Investigative journalists worked with a CSO partner and uncovered an overpricing scam, which drew in several public officials. In 2015, two men were sentenced to prison, while the Corruption Eradication Commission continues to look at other suspects including the then governor of the province, Ratu Atut.<sup>1</sup>

<sup>1</sup> <http://www.cnnindonesia.com/nasional/20150527121940-12-55988/ratu-atut-diperiksa-kpk-sebagai-tersangka-kasus-alkes/> [Accessed: 12/12/2016]

## Achieving value for money

Open contracting improves public bodies' understanding of their own procurement processes and helps to identify both the forces that increase costs and the opportunities to reduce them. Procurement strategies and performance data, both favourable and unfavourable, are published and become resources for analysis and learning. This is particularly useful for the healthcare sector where procurement is typically decentralised and conducted by small entities like hospitals, which may lack commercial and technical expertise.

### Example

A group of hospital trusts in the UK National Health Service (NHS) collated and standardised manufacturer and price data for generic products such as exam gloves and disposable aprons, which they were purchasing as individual trusts. The data was analysed and opportunities to aggregate demand and leverage collective purchasing power were identified. According to an independent review, "Results from this early work indicate savings of between 15 to 50 per cent beyond current best NHS prices and it reduced the variety of different products across manufacturers by up to 80 per cent".<sup>i</sup>

<sup>i</sup> Department of Health, 2016. Operational productivity and performance in English NHS acute hospitals: Unwarranted variations, p.46.

## Improving the business environment

Open contracting creates healthy, more competitive markets by increasing the accessibility of tenders and therefore the number of bidders per tender and new entrants to the market. Publishing procurement data also improves the business environment because firms know the value and expiry dates of public contracts, which helps them to plan effectively. Moreover, it becomes easier for governments to identify and amend tenders that offer poor commercial incentives.

Procurement is now recognised by the World Bank, the OECD and others as a strategic policy lever that can deliver secondary objectives, such as local economic growth or increasing supply chain resilience.<sup>22</sup> More than three quarters of OECD countries, for example, have guides on how to use public procurement to promote sustainable development.<sup>23</sup> To know how and when to pull this lever effectively in healthcare, policymakers need access to information, which open contracting provides.

### Example

OpenOpps is a newly launched data portal that allows businesses to search for public tenders from all over the world. The site draws in open contracting data from 240 separate sources in 74 countries (such as the United Nations Global Marketplace, European Union Tenders Electronic Daily and the UK government's Contracts Finder). Businesses can search for opportunities to sell to governments around the world from a single platform and access market intelligence, which is created through the analysis of completed tenders.<sup>i</sup>

<sup>i</sup> <https://www.openopps.com> [Accessed: 12/12/2016].

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<sup>22</sup> Organisation for Economic Co-operation and Development. Public Procurement for Sustainable and Inclusive Growth: Enabling reform through evidence and peer reviews, p.3.

<sup>23</sup> *ibid*, p.11.



## Better monitoring of service delivery

Multi-stakeholder monitoring of service delivery is a keystone principle of open contracting. Academics, journalists, and non-government organisations (NGOs) can do things that government agencies cannot. They have broader mandates, richer expertise, and more flexible and diverse research methods. Open contracting mobilises these assets and increases the dynamism of public services monitoring. Even businesses can participate; competitors have both the motivation and technical knowhow to investigate the contracts signed by their rivals, which in the procurement of complex medical devices or uncommon drugs is rare. Effective monitoring depends on governments taking appropriate enforcement action in response to the results and thereby closing the feedback loop.

### Example

A Spanish non-profit organisation called Civio recently conducted “a journalistic investigation into access to medicines around the world”. The organisation sourced data on the prices of 14 essential, non-patented drugs in 61 countries and compared them against both international reference prices and the in-country daily wage of the lowest paid public servant - as an indicator of affordability. This unorthodox methodology and country sample produced thought-provoking insights about the way global medicine markets operate. For example, “In Nigeria or Congo, 30 omeprazole (30 pills) can cost almost 13 working days. In Spain, Italy and Germany, the same treatment is paid with between 1 or 2 hours’ wages”.<sup>1</sup>

<sup>1</sup> <http://medicamentalia.org/access/prices/> [Accessed: 12/12/2016].

## 2. What are the key approaches to open contracting?

At least 3 specific approaches fall under the rubric of open contracting: Integrity Pacts (IPs), electronic procurement (e-procurement) and the Open Contracting Data Standard (OCDS). The approaches were developed in that order and each of them has evolved, in iterations, after implementation and evaluation. There is a scarcity of literature on open contracting within the healthcare sector, but all three methods have been used to some extent.

Two additional approaches are also described here: Red Flags monitoring, which leverages e-procurement data, and outsourcing procurement to international organisations, which has been used successfully alongside other open contracting reforms.

### Integrity pacts

Integrity Pacts (IPs) are mutual commitments between public and commercial contracting parties to refrain from corruption and guarantee transparency during a procurement transaction. An independent third party, the civil society monitor, is granted access to documents and procedures in the procurement process to ensure that the parties adhere to the terms of the IP. The monitor's role is to ensure adherence to proper procurement procedures at each stage as agreed upon in the IP and thus mitigate the risk of corruption from taking place. In practice, this involves inspecting documents, liaising with stakeholders, participating in meetings and reporting on outcomes of the monitoring activities to the public, among other tasks.<sup>24</sup>

The model was developed by TI in the 1990s specifically to tackle corruption and has been used in 23 countries.<sup>25</sup> According to a global learning review commissioned by TI in 2015, the IP was a “pioneering anti-corruption instrument” but points out that many of its original features have become outmoded by new thinking, laws and tools. In response, Transparency International has designed an updated model IP based on the latest open contracting standards. TI promotes implementation of this model alongside other open contracting initiatives and additional social accountability mechanisms.

Mexico, Slovakia and Honduras are among the countries in which IPs have been successfully used in the healthcare sector. An implementation manual outlines four components of successful IPs: political will to deploy them, full transparency at every step, properly resourced independent monitoring, and close cooperation and involvement from civil society.<sup>26</sup>

TI signed an Integrity Pact with the European Union (EU) in 2016 which covers 17 major public contracts worth a total of nearly €1 billion.<sup>27</sup> A coalition of 15 partners made up of government, business and civil society will monitor the projects, which are dispersed across 11 EU

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<sup>24</sup> Transparency International, 2014. Integrity Pacts in Public Procurement: An implementation guide, p.69.

<sup>25</sup> Basel Institute on Governance, 2015. Learning Review: Transparency International's Integrity Pacts for Public Procurement, p.6.

<sup>26</sup> Transparency International, 2014. Integrity Pacts in Public Procurement: An implementation guide, p.10.

<sup>27</sup> [http://ec.europa.eu/regional\\_policy/index.cfm/en/policy/how/improving-investment/integrity-pacts/](http://ec.europa.eu/regional_policy/index.cfm/en/policy/how/improving-investment/integrity-pacts/) [Accessed: 12/12/2016]

countries.<sup>28</sup> One of these projects includes the Slovenian Ministry of Health and the Slovenian chapter of Transparency International.<sup>29</sup> This project will utilise updated integrity pacts based on the findings from the learning review and up-to-date standards in procurement integrity and transparency.

## E-procurement

One of the biggest reforms to government purchasing this century has been the move to electronic procurement (e-procurement), which began with the adoption of digital public administration systems and continues today. e-procurement reduces human intervention (which can lead to opportunities for bribery) and eliminates time-consuming paper procedures, while creating accessible audit trails. It can also level the playing field for businesses by providing a neutral and accessible platform where contracts can be advertised, tendered, awarded, managed and analysed. In South Korea, e-procurement cut the average processing time of bids from 30 hours to 2 and created annual efficiency savings of US\$1.4 billion for the public sector and US\$6.6 billion for business.<sup>30</sup>

The transition to e-procurement has created new possibilities for the analysis of public procurement. The data created by hundreds of thousands of digital tenders and contract awards is now being mined for insight by both governments and third parties. The use of this data for innovation, efficiency and oversight offers incredible potential although it often remains unfulfilled.

The World Bank's Benchmarking Public Procurement 2016 report states that 73 of the 77 surveyed countries have a public procurement website, but there is high disparity in their usage, technical sophistication and transparency.<sup>31</sup> For example, while all EU member states have some kind of e-procurement system in place, few States mandate the use of the system across all areas of government (Cyprus, Italy and Portugal are leaders here).

The transparency and functionality of e-procurement systems also varies greatly. Georgia, Ukraine and Paraguay operate relatively new, highly transparent, granular systems, but many others are comparatively opaque. e-procurement transparency is also critiqued for its supply-side focus; governments do not always publish information that is interesting or accessible to stakeholders.

## The Open Contracting Data Standard

The Open Contracting Data Standard (OCDS) addresses two common problems with capturing and publishing e-procurement data: variable data-quality and a supply-side focus.

The OCDS provides a benchmark for transparency throughout the procurement cycle and identifies documents and data that should be disclosed in five stages (see figure 1) of procurement: planning, tender, award, contract and implementation. The OCDS also includes a technical schema that helps governments and civil society publish and analyse procurement data in accessible, machine readable and interoperable formats. This allows users to join OCDS data with other datasets and to build tools for monitoring, analysis and innovation.

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<sup>28</sup> [https://www.transparency.org/whatwedo/activity/clean\\_contracting\\_safeguarding\\_eu\\_funds\\_in\\_europe](https://www.transparency.org/whatwedo/activity/clean_contracting_safeguarding_eu_funds_in_europe) [Accessed: 12/12/2016].

<sup>29</sup> <http://www.transparencyinternational.eu/2016/11/clean-contracts-in-slovenian-health-care-an-interview-with-the-minister-of-health/> [Accessed: 12/12/2016].

<sup>30</sup> Transparency International, 2014. The Role of Technology in Reducing Corruption in Public Procurement, p.8.

<sup>31</sup> World Bank Group, 2016. Benchmarking Public Procurement 2016: Assessing public procurement systems in 77 economies, p.3.

Figure 1: The contracting process



Source: Open Contracting<sup>32</sup>

The OCDS was developed by the Open Contracting Partnership (OCP), which was incubated at the World Bank before launching in 2015. The OCP conducts advocacy and research, while providing technical support to governments and civil society.

The OCP emphasises the importance of political will and public participation in making the OCDS work in practice. Top-down, supply-side models of data disclosure often fail to engage civil society or the private sector and thus have little impact. The OCDS implementation guidance advises public bodies to work closely and responsively with stakeholders that demand procurement information.

Prior to implementation, governments need to understand, demand and define use cases, in order to release information that helps stakeholders achieve social and commercial objectives. The OCDS guidance evaluates impact through the third party usage of data: “The success of implementing the Open Contracting Data Standard should not be measured by compliance but by how much data is being used”.<sup>33</sup> The OCP also stresses the need for governments to close feedback loops, by responding appropriately to the impacts of disclosing open contracting data.

Eight governments are currently publishing the OCDS data in some form, according to the OCP, including Colombia, Mexico and Paraguay in Latin America, Moldova, Ukraine and the United Kingdom in Europe and Canada and Taiwan elsewhere. In Canada Paraguay and Ukraine these OCDS publication schemes include coverage of the health sector, although little has been published evaluating their success. Government enthusiasm for the OCDS is rapidly growing around the world. More than 10 countries are currently in the process of implementing the OCDS, while another 25 have made related commitment.

<sup>32</sup> [http://standard.open-contracting.org/latest/en/getting\\_started/contracting\\_process/](http://standard.open-contracting.org/latest/en/getting_started/contracting_process/) [Accessed: 16/01/2017].

<sup>33</sup> <http://www.open-contracting.org/2016/08/18/use-case-guide/> [Accessed: 12/12/2016].

## Red Flags monitors

E-procurement data that is available through open data portals or freedom of information laws is often used by civic organisations to monitor corruption risk and efficiency. The most common and successful methodology for this third party procurement monitoring is the Red Flags approach. Red Flags monitoring uses algorithms to analyse data and measure the transparency and other variables of the contracting process, such as number of bidders, against a set of norms. When practice violates a norm, the system generates a Red Flag notification, which signals a corruption risk. Stakeholders, such as CSOs or journalists, use this information to conduct further investigation. The OCP and Development Gateway, a Red Flags platform developer, have published guidance on how to implement Red Flags systems.<sup>34</sup>

Red Flags systems based on EU-published procurement data are operational in Hungary, Romania and Poland, while civic initiatives in Russia and Kosovo, for example, also run similar programmes based on local data. Chile's Compras Transparentas provides strong accountability of healthcare spending from the Ministry of Health down to the hospital level. Red Flags models are cheap and easy to replicate but success depends on three factors; the quality and depth of data, the analytical capabilities of the software and, above all, the user-communities who analyse the results.

Integrity Action, a network of non-governmental organisations (NGOs), universities and policy makers, operates a Red Flags system that helps the recipients of aid and development projects to monitor procurement processes that affect their lives. The project runs in 11 countries with a high corruption risk and low levels of transparency, including Nepal, Liberia and Afghanistan. Integrity Action's design is interesting because it emphasises community empowerment and feedback loops. The platform helps communities of aid beneficiaries to access information and monitor procurement but it also adds features for users to publicly report problems and solutions that they discover in the monitoring process. Forty-nine projects currently focus on health (out of a total of 545) and are being monitored by 11 partner community organisations.<sup>35</sup>

## Outsourcing and partnerships with international organisations

Reforming administrative systems that suffer from entrenched corruption can be challenging, even with high-level political will. Political executives who are unable or unwilling to take on corrupt procurement bureaucracies sometimes turn to another solution: outsourcing. A number of United Nations (UN) agencies and other non-profit organisations provide technical assistance to governments battling with corrupt healthcare agencies and organisations.

In Ukraine, the newly formed government had no confidence in its Ministry of Health and passed legislation in 2015 which mandates that the procurement of all pharmaceuticals is outsourced to a pool of six non-profit international organisations: UNDP, UNICEF, Crown Agents, Partnership for Supply Chain Management, Global Drug Facility and the IDA Foundation. The former three purchased medicines on behalf of the Ukrainian government in 2016; the latter three, while not contracted in Ukraine, purchase medicine on behalf of other governments around the world. In Honduras, meanwhile, the United Nations Office for Project Services (UNOPS) participates in medicine procurement through an independent trust, which is also composed of a bank and experts appointed by the Ministry of Health.

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<sup>34</sup> OCP & Development Gateway, 2016. Red Flags for integrity: Giving the green light to open data solutions.

<sup>35</sup> <http://www.developmentcheck.org/> [Accessed: 12/12/2016].

The transparency of these initiatives is varied and, while they do not neatly fit inside a definition of open contracting, they nonetheless achieve integrity by securing the participation of actors from outside of government.

## From open to clean contracting

The endgame of open contracting is clean contracting, in which fairness, integrity and efficiency are norms. The path to clean contracting begins, typically, with the deployment of one or more of the approaches described above. These methods are not mutually exclusive and are often used in a complementary fashion.

When selecting an approach, stakeholders should consider the opportunities and threats of the local political, administrative, business and civic contexts. For example, IPs are low-tech and usually do not require any legal or regulatory change, which, if political will exists, can make them straightforward to implement in challenging environments.

Some e-procurement systems that are already in place offer degrees of public transparency and accountability, which can be leveraged easily for further innovation and analysis (such as the Red Flags model). The OCDS is perhaps emerging as the gold standard in open contracting, but implementation requires a technically advanced e-procurement system, regulations that mandate its use and an active civil society. It is not always easy to achieve all of this at once.

In the medium- and long-term, clean contracting will typically require the co-deployment of several complementary approaches. A strong open data platform which provides macro-level oversight (such as OCDS data), independent monitoring of the procurement process (achieved through IPs) and the participation of communities affected by procurements in decision making processes throughout the procurement cycle, are all necessary ingredients for clean contracting.

### The UK Anti-Corruption Summit

At the UK Anti-Corruption Summit in May 2016, four governments made commitments to introduce the OCDS into their healthcare procurement systems (a further 10 governments pledged to introduce open contracting in general). Argentina and Malta stated they would implement the OCDS throughout their health sectors, Nigeria aims to apply the OCDS to the “Building of Health Centers and Improvement of Health Services”, while Mexico will “explore the implementation of open contracting” in healthcare.<sup>1</sup>

The summit also saw the creation of the ‘Contracting 5’: a partnership between Colombia, France, Mexico, Ukraine and the UK, which aims to promote innovation, peer learning and best practice in open contracting globally. The OECD supports the Contracting 5

<sup>1</sup> <https://www.gov.uk/government/publications/anti-corruption-summit-country-statements> [Accessed: 12/12/2016].

# 3. Case studies

Section three of this report demonstrates the real world benefits that open contracting has already delivered in healthcare. Three geographically disparate case studies, drawn from Africa, Europe and Latin America, have one thing above all in common - public participation in procurement and responsive action from government have improved procurement outcomes.

Open contracting is in many ways still an emerging approach and these case studies focus on results over methodologies. The tools, analyses and outcomes are not necessarily examples of best practice, but rather inspiring practice. The case studies concentrate on the four key benefits of open contracting and consider the country contexts that made reform possible.

## HONDURAS

More than 60 per cent of Hondurans live in poverty<sup>36</sup> and consequently depend on the state for access to healthcare. According to the United Nations World Food Programme (WFP), one in four Honduran children suffer from chronic malnutrition and this rate reaches 48.5 per cent in rural areas.<sup>37</sup> Deadly outbreaks of infectious diseases, like Dengue fever, are common and the country recorded its first Zika cases in 2015.

Despite this, Honduran public health has been chronically underfunded. In 2014, the government spent US\$107 per capita on public health.<sup>38</sup> High-income countries such as Denmark and France spent 35 to 50 times this amount in the same year.<sup>39</sup> On top of this, widespread corruption and political instability has compromised the procurement of medicines for many years in Honduras.

But, in 2009 the presidential coup proved an unlikely catalyst for medicine procurement reform. In contrast to the polarised political movements that formed on either side of the coup – both of which seemed to throw their support between competing, but similarly flawed politicians – a social movement called Transformemos Honduras (Let's Transform Honduras) focused on strengthening institutions and fighting corruption in all contexts. Transformemos Honduras (TH) involves many civil society organisations and is led by the Transparency International chapter in Honduras, Association for a More Just Society (AJS).

TH used freedom of information laws to access electronic procurement (e-procurement) data on the public purchase of medicines. Analysis conducted by TH and the investigative journalism website Revistazo, suggested a cartel was operating to raise prices and the government was dubiously using direct purchase procurements.<sup>40</sup> The procurement data served as a basis for an investigation into the medicine supply chain, which proved widespread fraud, theft and bribery.

Advocacy campaigns led by TH based on investigative journalism, social media and personal interactions with high-level officials were successful. Politicians linked to the corruption have resigned and a number of public officials have been arrested. The Honduran government has systemically restructured the procurement process. An independent body composed of a private bank, international organisations and civil society now manages and oversees the public purchase of medicines.

### Open contracting design: using freedom of information

In 2006, Honduras passed a freedom of information law to give citizens the right to access government data, although in practice they were often denied information. Three years later, TH made requests for the Ministry of Health's (MoH) e-procurement data and, after some legal interventions and a six-month waiting period, TH began to receive responses. TH systematically collated, cleaned and standardised the e-procurement data from 2005 to 2010. It then worked with investigative journalism organisation Revistazo to publish an analysis of the quality and integrity of the Ministry's purchases.

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<sup>36</sup> <http://data.worldbank.org/country/honduras> [Accessed: 12/12/2016].

<sup>37</sup> <https://www.wfp.org/countries/honduras> [Accessed: 12/12/2016].

<sup>38</sup> <http://apps.who.int/gho/data/view.main.HEALTHXPCAPHND> [Accessed: 12/12/2016].

<sup>39</sup> <http://apps.who.int/gho/data/view.main.HEALTHXPCAPDNK>;

<http://apps.who.int/gho/data/view.main.HEALTHXPCAPFRA> [Accessed: 12/12/2016].

<sup>40</sup> Transformemos Honduras, 2011. Análisis del Precio de los Medicamentos Adquiridos por la Secretaría de Salud Durante el Período 2005 – 2010.

[http://www.revistazo.biz/web2/docs/Analisis\\_Medicamentos\\_SESAL\\_2005\\_2010\\_240811.pdf](http://www.revistazo.biz/web2/docs/Analisis_Medicamentos_SESAL_2005_2010_240811.pdf) [Accessed: 06/01/2017].



## Detecting cartel collusion

The data assembled by TH revealed that a handful of Honduran companies controlled the medicines market. There were 214 companies registered to supply medicines but only 37 had ever won government business; 10 of these companies controlled 88 per cent of the market. TH noted that many of the unsuccessful bidders were shell companies without addresses or phone numbers, which were used to manipulate prices by placing bids that would never win business. The identities of the companies' owners remain unknown as Honduras, like most countries, has no register of beneficial company ownership. Despite this it is clear they were used to distort market prices and increase the profits of the elite group of companies.

According to analysis by TH, the government overpaid for both medicines and medical equipment. The unit price of many medicines was more than one third higher than international averages calculated by the World Health Organisation (WHO). For example, chemotherapy drugs such as vinorelbina, cisplatin and doxorubicin were bought respectively at 34, 36 and 41 per cent above international averages.<sup>41</sup> Basic medical equipment was also overpriced, with the sterilising soap Glutaraldehyde sold to the state at US\$18.40/gallon, which was 83 per cent above the international average of US\$10.66/gallon.

## Value for money: direct purchases and competitive tendering

TH revealed that the Ministry was using a loophole in Honduran law to avoid running competitive tenders. When a state of emergency is declared the government can forego competitive tendering and make direct purchases of medicine to accelerate the acquisition process.<sup>42</sup> For example, in 2010 49 per cent of 430 drugs were out of stock,<sup>43</sup> and as a result Honduras could not treat an outbreak of Dengue fever, which killed 43 and hospitalised 40,000. The Health Minister declared a state of emergency, which was reasonable in the circumstances, but the shortage, TH argued, was manufactured by months of deliberate inaction at the MoH.<sup>44</sup>

E-procurement data released using freedom of information laws strongly suggested that the direct purchases made during this state of emergency were corrupt. One company was the sole bidder for tenders to supply 232 of the 405 drugs and thus automatically won the bids. A WHO price analysis of 22 of these medicines concluded that the MoH paid 18 million lempiras (US\$932,160<sup>45</sup>) for medicines that should have cost just 7.8 million lempiras (US\$403,936).<sup>46</sup> The price of basic medical equipment was inflated again; an existing government supplier of syringes raised its price 24 times and was still awarded the contract.

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<sup>41</sup> Calculated against WHO price guide. See: Management Sciences for Health. 2010. International Drug Price Indicator Guide. <http://apps.who.int/medicinedocs/documents/s18714en/s18714en.pdf> [Accessed: 12/12/2016].

<sup>42</sup> Honduras National Congress, Republica de Honduras ley de Contratación del Estado Poder Legislativo Decreto No. 74-2001, Articles 9 & 63. [http://www.oas.org/juridico/spanish/mesicic2\\_hnd\\_anexo7.pdf](http://www.oas.org/juridico/spanish/mesicic2_hnd_anexo7.pdf) [Accessed: 06/01/2017].

<sup>43</sup> <http://www.laprensa.hn/honduras/499779-97/aprueban-compra-de-medicamentos> [Accessed 06/01/2017].

<sup>44</sup> [http://transformemoshonduras.com/Salud/h\\_english.html](http://transformemoshonduras.com/Salud/h_english.html) [Accessed: 12/12/2016].

<sup>45</sup> This figure and the proceeding figure have been converted to US dollars using the 30 June 2010 conversion rate available at <https://www.oanda.com/currency/converter/> [Accessed 12/12/2016].

<sup>46</sup> [http://transformemoshonduras.com/Salud/h\\_english.html](http://transformemoshonduras.com/Salud/h_english.html) [Accessed: 12/12/2016].

## Leveraging political will for change

After TH published this information in a 2011 report, the Minister of Health, Arturo Bendana, resigned<sup>47</sup> and court indictments were filed against him alleging his misuse of state of emergency laws.<sup>48</sup> The new Minister of Health Dr Roxana Araujo immediately dismissed 47 regional officials in the Ministry of Health who were understood as participating in the operations overseen by Bendana.<sup>49</sup> Araujo's appointment and her pro-reform position was likely the result of earlier advocacy.

The first President elected after the coup was Porfirio Lobo. Early in his tenure, TH invested great effort in meeting him. As TH knew Lobo was concerned about the anti-democratic narrative of the coup, it framed healthcare reform as an opportunity for him to leave a positive legacy. This advocacy, combined with political pressure caused by the Minister's resignation, led Lobo to hire Araujo, who began working towards reform.

TH enjoyed a good relationship with Araujo and also collaborated with the Attorney General's office to investigate quality issues in medicine. The movement continued to publish reports with Revistazo based on e-procurement data accessed under freedom of information laws

## Monitoring of service delivery

In 2013, TH hired an investigator to monitor the procurement process during distribution and storage. The investigator worked in the government's medicine storage warehouse and obtained evidence of theft, fraud and bribery. Officials were adding zeros to order sheets, so that 6,000 units became 60,000 for example and then siphoning and selling the surplus (i.e. 54,000 units) themselves.<sup>50</sup>

The investigation also reported problems with the quality and storage of drugs. Certain medicines were found to be chalk dust that officials had been bribed to falsely certify. A medication for hypertension was used in the public health system for 14 months until testing in April 2013 revealed it was completely ineffective. Meanwhile, 47 per cent of HIV medications bought for 46 million lempiras (US\$2.36 million<sup>51</sup>) had expired in the warehouse.<sup>52</sup>

When the information was publicly reported by TH, the government was forced into immediate action. Araujo publicly criticised the warehouse manager and reportedly told the press she had a lot of explaining to do. The manager was then arrested alongside 5 colleagues and was charged with 22 counts of removing 1,889,500 units of medicine.<sup>53</sup> In total, TH estimates that nearly half of warehouse staff were determined to have participated in corruption and fired from their posts.

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<sup>47</sup> <http://www.proceso.hn/component/k2/item/33141-Inminente-renuncia-del-ministro-de-Salud.-Arturo-Benda%C3%B1a.html> [Accessed: 06/01/2017].

<sup>48</sup> <http://asjhonduras.com/webhn/tag/pgr-honduras/> [Accessed: 06/01/2017]; <http://www.laprensa.hn/sucesos/judiciales/364911-98/juez-otorga-medidas-cautelares-a-exministro-de-salud-arturo-benda%C3%B1a> [Accessed: 06/01/2017].

<sup>49</sup> <http://www.elheraldo.hn/pais/572403-214/secretaria-de-salud-destituira-a-47-administradores-a-nivel-nacional> [Accessed: 06/01/2017].

<sup>50</sup> Transformemos Honduras, 2014? Transparencia y Calidad Técnica en Los Procesos de Recepción, Almacenaje y Distribución de Medicamentos. [http://www.revistazo.biz/web2/docs/Recepcion\\_Almacenaje\\_Distribucion\\_y\\_anexos\\_TH.pdf](http://www.revistazo.biz/web2/docs/Recepcion_Almacenaje_Distribucion_y_anexos_TH.pdf) [Accessed: 06/01/2017].

<sup>51</sup> This figure was converted to US dollars using the 16 March 2012 conversion rate available at <https://www.oanda.com/currency/converter/> [Accessed 12/12/2016].

<sup>52</sup> <http://www.revistazo.biz/web2/index.php/nacional/item/1000-medicinas-contras-el-vih-valorados-en-215-millones-de-lempiras-se-habr%C3%ADan-vencido-en-el-acm> [Accessed: 06/01/2017].

<sup>53</sup> <http://www.revistazo.biz/web2/index.php/nacional/item/772-%E2%80%9Ca-casa%E2%80%9D-los-seis-involucrados-en-supuesto-robo-de-medicinas> [Accessed: 06/01/2017];

## Feedback loop: building a “golden triangle” to administer medicine procurement

Following the investigations and advocacy by TH, the Honduran government reformed the way it purchased medicines. Following the election of a new President who was sworn in January 2014, the government developed a new procurement model based on a golden triangle of participation between government, business and civil society. In May, the government created a Public-Private Partnership (PPP) trust, to administer public procurement of medicines. This trust is made up of three committees, whose members are drawn from business, international organisations and local civil society. Together, the committees participate in the pre-tendering, tendering and service delivery phases of procurement.

In pre-tendering, an “evaluation and support committee”, composed of three representatives of the UN Office for Projects Services (UNOPS) and two representatives of the Occidente Bank, now reviews all purchasing proposals for technical compliance and value for money. The Pan American Health Organisation (PAHO) and the United Nations Population Fund (UNFPA) provide further support. This is considered by TH as the most significant reform because it helps to ensure that all purchases are fairly priced and geared to the population’s health needs. This committee sends its findings to the “technical committee,” composed of three members who are appointed by the Secretary of Health, which then administers a competitive tendering process and awards contracts.

A civil society “transparency committee” composed of TH, AJS and the Catholic Church, is granted access to documents and has oversight powers. The transparency committee’s remit includes oversight of the storage, distribution and delivery of acquired products. Independent chemists are hired to carry out medicine quality assessments; if drugs do not meet standards they are formally rejected and then destroyed to prevent sales elsewhere. As part of its role, TH has trained volunteers to visit medicine storage facilities up to four times a month to verify deliveries, inspect procurement documents and examine medicine volumes.

Under the previous Ministry system, payment of suppliers often took more than 12 months and regularly required a bribe. Because of this many companies viewed price inflation or other corruption as legitimate. Instead, since August 2013 the government now transfers its annual medicines budget to Occidente Bank, which holds funds on behalf of the government and makes timely payments once a contract is awarded. This policy is understood to have greatly reduced opportunities for bribery since it separates decision-making and payment processes. It was moreover a signal to potential suppliers that the payments system would be timely and non-preferential.

Bidding companies are now also required to sign Integrity Pacts (IPs), which complement the central structural reforms. One policy intention is to place companies that violate IPs on watch-lists that prevent them from bidding for public contracts again.

## Feedback loop: taking enforcement action

The new procurement structure appears to be effective at uncovering poor purchases. In March 2015, the MoH received 700,000 bottles of multivitamins that it had purchased for 20 million lempiras (US\$899,564<sup>54</sup>) for distribution to malnourished children. The vitamins were sent to a quality assurance laboratory to ensure they met tender specifications. The medicine vials contained only 4 of the 11 vitamins specified, while the total volume delivered was 17 per cent less than specified. TH did not approve the purchase and the government terminated its contract with the company. Three months later, the company owners, which included a member of the Honduran Congress, were charged with fraud, crimes against public health and falsification of documents.<sup>55</sup> At the time of writing they are awaiting trial.

However, prosecuting politically connected, corrupt individuals is a difficult and dangerous task. A lawyer representing the defendants in this case was fatally stabbed,<sup>56</sup> while a prosecution witness survived five gunshots to the head.<sup>57</sup> Taking appropriate enforcement action against public officials also remains a challenge in Honduras. The warehouse manager Maritza de Solórzano, nevertheless, was found guilty of seven offences.<sup>58</sup>

## What next?

The investigations based on e-procurement data by TH and Revistazo did indeed transform Honduras' public procurement of medicines. Through the participation of international organisations, civil society and business, government reforms have added assurance to the pre-tendering, tendering, payment and service delivery phases of procurement. Procurement data is now published and visualised on the Open Medicines platform run by Revistazo.<sup>59</sup>

In 2017, TH plans to conduct a comprehensive analysis on the impact of the procurement reform. This will include full value for money calculations, which takes into account a range of economic variables, such as exchange rate fluctuations and volumes. This will help the coalition understand the impacts of wholesale changes and plan its next intervention.

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<sup>54</sup> This figure was converted to US dollars using the 16 March 2015 conversion rate available at <https://www.oanda.com/currency/converter/> [Accessed: 12/12/2016].

<sup>55</sup> <http://www.bbc.co.uk/news/world-latin-america-33343365> [Accessed: 06/01/2017]; <http://www.laprensa.hn/sucesos/854246-410/honduras-orden-de-captura-contra-familia-de-lena-guti%C3%A9rez> [Accessed: 06/01/2017].

<sup>56</sup> <https://www.abqjournal.com/689170/in-honduras-chaos-a-mans-killing-tells-a-nations-story.html> [Accessed: 06/01/2017].

<sup>57</sup> <http://www.laprensa.hn/sucesos/862593-410/atentan-contra-testigo-prottegido-en-caso-astropharma> [Accessed: 06/01/2017].

<sup>58</sup> <https://www.mp.hn/index.php/author-login/37-agosto/572-sentencias-condenatorias-obtiene-la-fetccop-en-caso-de-almacen-central-de-medicamentos> [Accessed: 06/01/2016].

<sup>59</sup> <http://www.revistazo.biz/medicamentosabiertos/> [Accessed: 04/01/2016].

## NIGERIA

Primary healthcare provision in Nigeria is among the poorest in the world. According to the United Nations International Children's Emergency Fund (UNICEF), more than 750,000 children under five died in 2015,<sup>60</sup> which is 12.7 per cent of the global total. In the same year, an estimated 58,000 mothers died in childbirth, more than any other country in the world.<sup>61</sup>

The government has long recognised problems in primary healthcare access, which is particularly poor in rural regions<sup>62</sup> where more than half the population lives.<sup>63</sup> The Nigerian Primary Health Care Development Agency (NPHCDA) was founded in 1992 to improve and coordinate primary healthcare provision. Currently, its specific policy objectives include:<sup>64</sup>

- improving access to basic health services
- improving quality of care
- strengthening partnerships between health bodies
- strengthening community engagement

The construction of Primary Healthcare Centres (PHCs) across rural parts of Nigeria has been a key plank of policy since the NPHCDA's inception. Yet despite this longstanding policy, primary healthcare indicators have shown few signs of improvement over the years.

In 2014, a Nigerian civil society organisation called the Public Private Development Centre (PPDC) began using the newly implemented Freedom of Information Act (FOIA) to monitor the procurement of new PHCs. The PPDC then allied with academics, investigative journalists and procurement monitors, to link and analyse data from the budget, contract and service delivery phases of the procurement process.

This innovation in contract monitoring showed that the construction and operation of PHCs was extremely ineffective. The analysis suggested that tendering procedures were uncompetitive, value for money was poor and coordination between national and local agencies was weak. The NPHCDA was clearly not delivering its policy objectives, although the data was not detailed enough to show if this was a result of corruption or mismanagement.

Smart advocacy campaigns, based on the direct lobbying of high-level officials and coverage in investigative news outlets, have since helped to secure a new government commitment to PHC construction. Meanwhile, the Nigerian government has pledged to introduce the Open Contracting Data Standard (OCDS) to remedy the problems which the PPDC highlighted.

### Open contracting design: using freedom of information

Like more than 100 countries in the world, Nigeria has a FOIA, which gives citizens a legally enshrined right to access government data. In 2015, the PPDC used the FOIA to request data about the construction of all PHCs that had been funded by the NPHCDA since 1992. A partial FOIA response showed that only 48 per cent of the planned 1,438 PHCs had actually been built over the last 10 years and 52 per cent were classified as "uncompleted/yet to start/relocation".

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<sup>60</sup> <https://data.unicef.org/topic/child-survival/under-five-mortality/> [Accessed: 12/12/2016].

<sup>61</sup> World Health Organisation. 2015. Trends in Maternal Mortality: 1990 to 2015 - Estimates by WHO, UNICEF, UNFPA, World Bank Group and the United Nations Population Division, p.19.

<sup>62</sup> Ugo, O. 2016. Strengthening Primary Health Care Services in Rural Nigeria: The Potential of Using Midwives as Skilled Birth Attendants. Health Systems and Policy Research, p.2.

<sup>63</sup> <http://data.worldbank.org/indicator/SP.RUR.TOTL.ZS> [Accessed: 12/12/2016].

<sup>64</sup> <http://www.nphcda.gov.ng/index.php/about-us/what-we-do> [Accessed: 12/12/2016].

The annual rate of completion for new PHCs was also steadily declining and had not been above 32 per cent since 2010.

The data also showed that in 2014 at least 89 PHCs were commissioned at a cost of 2.6 billion naira (US\$15.79 million<sup>65</sup>).<sup>66</sup> The PPDC asked a simple but important question: were these PHCs providing value for money? To answer this, the organisation needed to follow the money from budget, to contract, to service delivery.

The PPDC then used the FOIA again to obtain further information on the 89 PHCs, which included the value of the contract, the name of the winning bidder and the technical specifications of each PHC and cross referenced it against government open data on capital expenditure. But analysing these disparate datasets was challenging and the PPDC struggled to understand how budget and contract information, held in different structures, were related.

## Collaborating to innovate: from FOIA to OCDS

The PPDC team reached out for technical support to the Pan Atlantic University (PAU), which helped to organise the data from multiple sources using spreadsheets provided by the Open Contracting Partnership's (OCP) help desk. The sheets convert data into the OCDS format, which helps to structure disparate data sources for analysis.

Data journalists from the Premium Times Centre for Investigative Journalism (PTCIJ) then helped the PPDC to analyse the data to determine value for money in the procurement process. The PPDC published the information on a standalone platform called Budeshi, which means "open it" in Hausa.

Finally, the PPDC teamed up with individuals and organisations and visited PHCs to review their operational status. The monitors recorded the status of PHCs as active if the construction was complete and the centre was open, staffed and stocked.

A dataset was created by the PPDC, which joined up information from different phases of the procurement cycle. It could compare budgeted spending to contract awards, review supplier information and assess the operational performance of PHCs. Together, civil society and media had innovatively reverse-engineered a basic OCDS dataset using freedom of information, open data, fieldwork and support from the OCP.

## Uncovering poor value for money

The PPDC provided Transparency International with Budeshi data on 40 PHCs for which it had information on budget, contract amount, contractor, location and status. Although the data is relatively simple, it provides considerable insight into the value for money and competitiveness in the procurement process. For example, only 16 of the 40 PHCs were active. The total spent on these 16 PHCs was 388 million naira (US\$2.35 million), although the total for all 40 PHCs was 1.07 billion naira (US\$6.53 million). Thus, only 36 per cent of the spending on contracts to build new PHCs led to operational facilities.

Some PHCs were still under construction and others were categorical failures. At least 11 further PHCs had been built but were not operational. The reason for this was simple: while the

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<sup>65</sup> This value and all other values in the Nigerian case study have been converted to US dollars using the 30 June 2014 conversion rate available at <https://www.oanda.com/currency/converter/> [Accessed 12/12/2016].

<sup>66</sup> <http://us5.campaign-archive2.com/?u=01684c1e72bc44a3108a6413b&id=e75695af60> [Accessed: 12/12/2016].

NPHCDA commissions and funds the construction of PHCs, a local government body pays for staff, equipment and medicine. Evidently, local bodies could or would not provide this funding and thus the NPHCDA failure was largely one of planning and communication with other health bodies.

## Savings or misappropriations?

In total, 30 per cent of the total budgeted spend on the 40 PHCs was not spent through contracts. The Nigerian government explained this disparity to the PPDC as efficiency savings made through competitive tendering.

But, analysis of the joined up data raises doubt about this claim. The greater the difference between budget amount and contract amount, the less likely a PHC was active: 19 PHCs had a contract spend that was between 7 and 23 per cent lower than the budget amount, and, of these, 10 were active; 17 PHCs had a contract spend that was 33 to 54 per cent lower than the total budget and, of these, only five of these were active; and a further four PHCs were built without a recorded budget and only one was active. The analysis shows a clear negative correlation between the amount “saved” and the likelihood that the PHC was active. This suggests disparities between budget and contract amounts are more likely related to corruption or waste.

The joined up data also shows that PHCs with bigger budgets were less likely to be active. Four of the five PHCs with the joint-lowest budget of 23.8 million naira (US\$144,588) were active, while only 4 out of 19 PHCs with a budget of 30 million naira (US\$182,253) were operational. Projects with bigger budgets carry bigger risks, which may explain the disparities, although all of these construction projects are relatively cheap. It may be, alternatively, that bigger budgets offer greater incentives and opportunities for the misappropriation of funds, which in turn drives both poor performance and weak governance.

## Competition for contracts

Nigerian law mandates open competitive bidding for public contracts in which the lowest bid that meets a tender specification wins the contract. In total, the 40 PHCs were built by 40 different contractors, with no company used twice. However, 26 of the 40 contracts were awarded for the precise amount of 21,986,893 million naira (US\$128,105), even though their budgets ranged from 23.8 million naira (US\$144,588) to 47.5 million naira (US\$288,568) and were, on average, 33 million naira (US\$200,479).

The common and exact price of 21,986,893 million naira (US\$128,105) raises doubts about the competitiveness of the procurement process and whether the procedures were in accordance with Nigerian law. It is highly unlikely that 26 companies, bidding for 26 different contracts, dispersed across eight different States, all arrived at the same low cost bid. It is possible that the figure was a benchmarked average cost, but then attention simply turns to the huge disparities in budget. It is also possible that this figure reflects issues with the competitiveness and accessibility of the tenders and even market collusion, which all undermined value for money.

Nigeria, like most countries, does not have a register of beneficial company ownership, which means that the ultimate owners of a company can hide their identity. Although it appears that 26 different companies won contracts at the same price, it is possible that some companies were controlled by the same individuals and groups.

## Feedback loops: using media and advocacy to create policy change

The loose alliance of PPDC, PAU and PTCIJ had shown that the government construction of PHCs was at best extremely inefficient and at worst suffered from corruption and collusion. It was only by joining up budget and contract data to fieldwork reports that that this picture emerged. The next challenge was to ensure that the media used the information to inform the public and campaign for changes to public policy.

The PTCIJ published several media stories based on the data,<sup>67</sup> while the International Centre for Investigative Reporting Nigeria also used the information.<sup>68</sup> The PTCIJ has now expanded its healthcare reporting to investigate the integrity and accountability of healthcare procurement (with support from the Bill & Melinda Gates Foundation). Working closely and effectively with media partners helped the PPDC to generate a degree of public understanding and pressure.

Meanwhile, procurement monitors used Budeshi data to advocate procurement transparency and reform. Two monitors, Priscilla Ogege and Margaret Azubuike, oversaw visits to more than 113 PHCs in the final three months of 2015 (14 of which were in the sample above). They communicated their findings to the NPHCDA, Ministry of Health and other healthcare bodies in the Nigerian government. In January 2016, the Minister of Health announced that the federal government would build 10,000 “functional primary healthcare centres”.<sup>69</sup> This announcement was received with cautious optimism, but parallel changes in contracting transparency could make PHC construction far more effective.

In December 2015, the PPDC visited Nigeria’s Attorney General and demonstrated the merits of joining up data using the OCDS. The Attorney General, who had taken office less than one month earlier, in the same year the country elected a new President, was impressed and pledged to pursue federal adoption of the standard; the story of this advocacy is published online.<sup>70</sup> Then at the UK Anti-Corruption Summit in May 2016, the Nigerian government pledged to implement the OCDS to the “building of health centres and improvement of health services”.<sup>71</sup> The Bureau for Public Procurement has begun work on implementation and also suggested Budeshi develop a geo-mapping feature to help with fieldwork.

The PPDC’s project essentially served as an informal pilot of the OCDS in Nigeria. Senior officials have recognised that open contracting can correct failing public policy and help to drive value for money in healthcare procurement. The PPDC has welcomed the government’s commitment to implement the OCDS but it intends to continue accessing information under FOIA and converting data to the OCDS until the new project is fully operational. In Nigeria, a country in which parts of the administration are systemically corrupt, nothing can be taken for granted.

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<sup>67</sup> <http://ptcij.org/blog/issue/state-of-primary-health-care-spending-in-nigeria-2001-2014/> [Accessed: 12/12/2016].

<sup>68</sup> <http://icirnigeria.org/n2-billion-primary-health-centres-waste-away-across-nigeria/> [Accessed: 12/12/2016].

<sup>69</sup> <http://leadership.ng/news/493844/fg-build-10000-primary-healthcare-centres-minister> [Accessed: 12/12/2016].

<sup>70</sup> <http://www.budeshi.org/2016/06/the-autobiography-of-budeshi-how-we-successfully-advocated-for-the-adoption-of-the-ocds-by-the-nigerian-government/> [Accessed: 12/12/2016].

<sup>71</sup> Nigerian Government. 2016. Country Statement from Nigeria, London Anti-Corruption Summit. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/523799/NIGERIA-FINAL\\_COUNTRY\\_STATEMENT-UK\\_SUMMIT.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523799/NIGERIA-FINAL_COUNTRY_STATEMENT-UK_SUMMIT.pdf) [Accessed: 12/12/2016].



## What next?

With a three-year grant from the MacArthur Foundation, the PPDC will continue to develop Budeshi. Its primary concern will be to participate in and oversee the government's implementation of the OCDS.

The PPDC is also working with the Africa Freedom of Information Centre, where it convenes the open contracting working group, to roll out the Budeshi platform to other African States. There is currently demand for the platform in Kenya, Uganda and Malawi. The PPDC is also aiming to get the private sector more involved to enable greater competition for contracts.

Meanwhile, the PTCIJ has a grant to pursue data journalism in health from the Bill & Melinda Gates Foundation and the PAU is exploring how it can integrate open contracting into its syllabus and increase research on technical implementation and use cases.

## UKRAINE

The government of Ukraine spent over 90 per cent of its healthcare budget treating cancer, acquired immune deficiency syndrome (AIDS) and tuberculosis (TB) in 2014.<sup>72</sup> Cancer is the second leading cause of death in Ukraine,<sup>73</sup> less than a third of the 220,000 people living with human immunodeficiency virus (HIV) receive antiretroviral therapy (ART)<sup>74</sup> and there are around 30,000 new cases of TB every year, with one in six being fatal.<sup>75</sup> A growing number of HIV patients, more than one in three, are also contracting TB, which often leads to death.<sup>76</sup>

The purchase of drugs to treat these diseases was, until recently, hampered by endemic corruption. Government auditors estimate that in 2013 the Ministry of Health overpaid for medicines by an average of 40 per cent due to cartel collusion, monopolies, price fixing and other strategies.<sup>77</sup>

As a result of well-documented supplier preferentialism, the Ukrainian private sector was sceptical and unwilling to bid for pharmaceutical contracts. Corruption was rife at the local level too, and although there is no research on procurement per se, there is evidence that bribery was common. A 2011 survey showed that 70 per cent of inpatients and 57 per cent of outpatients had made informal payments when accessing care in all hospitals.<sup>78</sup>

In 2014, mass demonstrations now known as the Revolution of Dignity forced Ukraine's corrupt President to flee the country and ultimately led to a new government. Amidst public anger and political upheaval, a group of volunteers spotted an opportunity to reform the public procurement system. A range of actors from civil society and business collaborated to design an e-procurement system called ProZorro. By restoring private sector faith in public contracts, ProZorro has helped more than 2,000 healthcare organisations to tender for contracts through open and fair competition, which has saved 15 per cent of their budgets. An alliance then developed between the volunteers and high level government reformers, which eventually led to legislation establishing ProZorro as the mandatory government procurement system in 2016.

The bottom-up reform led by ProZorro was complemented by a top-down intervention at the Ministry of Health (MoH). The new government, which understood the MoH administration was systemically corrupt, outsourced pharmaceutical procurement to three international organisations. This procurement tranche is part of a three-year government plan to drive corruption out of the health sector. The international organisations have achieved savings of between 10 and 38 per cent on the consolidated purchases of cancer, HIV and TB drugs.

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<sup>72</sup> AntAC, 2015. Ukraine's Diagnosis is Total Corruption, p.8. <https://drive.google.com/file/d/0B-HM1Qm7feVYVG9KcEE5SWZmUE0/view> [Accessed: 12/12/2016].

<sup>73</sup> World Health Organisation, 2014. Ukraine – Noncommunicable Diseases (NCD) Country Profiles. [http://www.who.int/nmh/countries/ukr\\_en.pdf](http://www.who.int/nmh/countries/ukr_en.pdf) [Accessed: 12/12/2016].

<sup>74</sup> UNAIDS, 2015. Country Progress Reports – 2015. [http://www.unaids.org/sites/default/files/country/documents/UKR\\_narrative\\_report\\_2015.pdf](http://www.unaids.org/sites/default/files/country/documents/UKR_narrative_report_2015.pdf) [Accessed: 12/12/2016].

<sup>75</sup> <http://uacrisis.org/41493-oleksandr-kvitashvili-3> [Accessed: 12/12/2016].

<sup>76</sup> European Centre for Disease Prevention and Control & WHO Regional Office for Europe. Tuberculosis surveillance and monitoring in Europe 2016, p.2015.

<sup>77</sup> AntAC, 2015. Ukraine's Diagnosis is Total Corruption, p.10. <https://drive.google.com/file/d/0B-HM1Qm7feVYVG9KcEE5SWZmUE0/view> [Accessed: 12/12/2016].

<sup>78</sup> Stepurko T et al. 2013. Informal patient payments in maternity hospitals in Kiev, Ukraine. *International Journal of Health Planning and Management*, 28(2):e169 –e187, p.61. [http://www.euro.who.int/\\_data/assets/pdf\\_file/0018/280701/UkraineHIT.pdf](http://www.euro.who.int/_data/assets/pdf_file/0018/280701/UkraineHIT.pdf) [Accessed: 12/12/2016].

## Open contracting design: a broad base of participation

After the revolution, a group of volunteers, which included activists, software developers, business people, procurement experts and State officials, began discussing how to tackle corruption in public procurement. The volunteers collectively recognised that to fight corruption in procurement they would need to restore trust between government, business and civil society.

The volunteers resolved to create a “golden triangle” of participation and cooperation between the state, the private sector and civil society. Together, they designed an e-procurement system called ProZorro (which means transparently in Ukrainian) that distributes the functions of the procurement cycle across the three groups. Government sets the rules, software companies operate the platforms for tendering and civil society uses business intelligence data for oversight and assurance.

The volunteers used two technical references for designing the system: the Georgian government’s successful and transparent e-procurement platform, which carries the motto “everyone sees everything”, and the Open Contracting Data Standard (OCDS), which provides clearly defined benchmarks for procurement transparency. The Open Contracting Partnership (OCP) adopted ProZorro as a showcase and learning project<sup>79</sup> and has provided systematic support to developers.

## Improving the business environment: an innovation that was adopted by government

A priority for ProZorro’s developers was to stimulate competition in the market for public contracts. It sought to achieve this by reducing barriers to bidding, ensuring total transparency of tenders and by putting software companies in charge of the tender administration process. ProZorro facilitates transparent reverse auctions, which means businesses can view the tender specifications and their competitors’ bids online, before placing their own bid. Contracts are then awarded to the lowest compliant bidder. ProZorro also minimises barriers to bidding by requiring only the winning company to complete qualification procedures after bidding, as opposed to all companies completing pre-qualification questionnaires.

These two measures reduced the costs of bidding for tenders and renewed faith in the integrity of contract awards. In an additional reform to promote integrity, ProZorro removes the administration of the tendering process from the public sector, which is viewed with historical suspicion. There is now no single platform for tendering in Ukraine. Instead, software companies operate competing commercial platforms, which all run on ProZorro data and charge a small fixed fee for usage. This keeps the tendering system autonomous of state funding (and interference) and promotes innovation in the tender process and procurement data. Government remains in charge of setting the rules for tenders and awarding contracts, but this separation of procurement functions makes bribery and fraud more difficult.

ProZorro was piloted by a handful of Ukrainian government bodies in February 2015 who were sympathetic to the aims of its volunteer creators. In April, after the platform demonstrated its potential, the Deputy Minister of Economic Development and Trade Max Nefyodov (a champion of reform) invited a ProZorro coordinator Oleksandr Starodubtsev to head up the government’s

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<sup>79</sup> <http://www.open-contracting.org/why-open-contracting/showcase-projects/ukraine/> [Accessed: 12/12/2016].

public procurement department.<sup>80</sup> This created a strong link between senior government reformers and the volunteers drawn from business and civil society. This and other forms of government backing has helped ProZorro win grants from international donors and increased its functionality. Although vested interests across Ukraine resisted reform, the government passed law which made it compulsory to use ProZorro for all procurement above certain thresholds from August 2016 onwards.

## Using ProZorro to achieve value for money and greater competition

It is too early to draw lasting conclusions from existing data but a cursory analysis reveals trends on value for money and competition. ProZorro has been used by 2219 healthcare organisations to run 47,015 competitive tenders with a combined budget of 2.07 billion hryvnia (US\$80.9 million<sup>81</sup>). The combined actual spend was 1.77 billion hryvnia (US\$69.17 million), which means an average saving of 15 per cent per healthcare organisation was achieved (a total of 306 million hryvnia US\$11.95 million). The use of ProZorro among healthcare organisations accelerated from January 2016 and as a result the average saving per tender increased by 32 per cent from January to October 2016.

Of the tenders run by all healthcare organisations, 64 per cent had only one to two bidders and the average savings were just seven per cent. However, in the 36 per cent of tenders where three or more companies placed a bid, public bodies saved an average of 35 per cent. The relationship between number of bidders and savings is positively correlated. When seven to nine companies placed a bid, average savings were 41 per cent and when there were 10 or more bidders, public bodies saved an average of 48 per cent. The data shows that competition is reducing prices, but that most tenders remain uncompetitive. Moreover, the average number of bidders in all tenders has steadily declined from the all-time high of 3.27 in January to 2.16 by October. While this should concern all ProZorro's stakeholders, now that the performance of the healthcare sector and individual organisations is monitored, problems with competition can be more easily identified and remedied.

The diversity of suppliers varies greatly among the healthcare organisations, from 1 to 475. However, among the 1,000 most active organisations, the average number of suppliers is 68. A ProZorro analyst from Transparency International Ukraine believes it is too early to reliably review data on the number of new bidders.

## Complex procurements: medical devices

Healthcare organisations used 22 per cent of their budgets to buy medical devices. For all tenders combined, there was an above average number of bidders (2.81) but organisations recorded below average savings (of 10 per cent). One possible reason for this is that ProZorro is, by design, a simple and accessible platform. The platform is not geared to manage the procurement of technically complex goods, which require more time intensive and laborious tendering procedures. The collection of data, once again, makes it possible to identify and rectify such situations.

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<sup>80</sup> <http://www.open-contracting.org/2016/07/28/prozorro-volunteer-project-led-nation-wide-procurement-reform-ukraine/> [Accessed: 12/12/2016].

<sup>81</sup> This figure and the preceding two figures have been converted to US dollars using the 30 October 2016 conversion rate available at <https://www.oanda.com/currency/converter/> [Accessed 12/12/2016].

## The Ministry of Health: outsourcing to international organisations

Parallel to the development of ProZorro, the Ukrainian Anti-Corruption Action Centre (AnTAC) lobbied the Ukrainian government to outsource its procurement of pharmaceuticals to international organisations. AnTAC argued that MoH procurement was not fit for purpose after the Security Services of Ukraine (which investigates corruption) estimated that 40 per cent of the department's procurement budget was lost to corruption. The tactics included cartel collusion, the manipulation of reference prices and price inflation scams in which several companies controlled by one owner "competed" in the tenders, among others.<sup>82</sup>

AnTAC's advocacy was successful and in 2015 the MoH outsourced its procurement administration to international organisations until 2018. In 2015, Crown Agents, the United Nations Development Programme (UNDP) and the United Nations International Children's Emergency Fund (UNICEF) managed 19 procurement programmes worth a total of US\$94.7 million. Each organisation used traditional, well-assured procurement techniques to achieve significant savings.

Crown Agents, a British company owned by a not-for-profit foundation, administered the procurement of adult and child oncology drugs, worth a total of US\$31 million. The company is a procurement and health systems specialist and implemented a competitive tendering procedure in line with World Trade Organisation (WTO) standards. The simple reform led Crown Agents to achieve year-on-year savings of almost 38 per cent, according to an independent project evaluation: "The net price of oncology drugs to the Ministry of Health of Ukraine decreased by an average of 37.9% and approximately 84% of the 168 items procured had a lower net price in 2015 as compared to 2014".<sup>83</sup> Despite the Ukrainian currency losing 50 per cent of its value against the dollar, Crown Agents provided the same year-on-year quantity of drugs at the same price in 99 per cent of cases.<sup>84</sup>

The MoH appointed UNDP to manage the procurement of eight drugs worth a total of US\$39.2 million, which included programmes for TB medicines (US\$9 million), HIV diagnostics (US\$4.3 million) and vaccines (US\$11.3 million). UNDP conducted these drug purchases in accordance with its internal procurement framework. UNDP was able to purchase, store and deliver the specified quantities of drugs for a total of US\$35.1 million and directed the budget surplus of US\$4.1 million towards the purchase of additional vaccines and an orphan disease programme.

UNICEF was contracted to procure 22 ART drugs to treat HIV and eight vaccines worth a combined US\$24.5 million. Like UNDP, UNICEF purchased the drugs under its internal procurement policies and achieved savings of 17.5 per cent in comparison to the 2015 budget for the same drugs.

The MoH's outsourcing is a strategic way of delivering medicines at a fair price, starving a corrupt administration of bribes and working with international organisations to learn lessons about good practice. Acting Minister of Health Ulana Suprun told Transparency International that "for the first time in 25 years Ukraine will have a 25 per cent vaccine reserve [as] recommended by [the] WHO." From 2019, the Ukrainian government will once again be responsible for purchasing medicines.

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<sup>82</sup> AntAC, 2015. Ukraine's Diagnosis is Total Corruption, p.10. <https://drive.google.com/file/d/0B-HM1Qm7feVYG9KcEE5SWZmUE0/view> [Accessed: 12/12/2016].

<sup>83</sup> Yadav, P., 2016. An assessment of the price of oncology drugs in Ukraine 2015, p.5.

<sup>84</sup> *ibid.*

## Feedback loops: civil society monitoring

As data is generated and business begins to participate, the challenging task of using the information to hold bodies to account begins. ProZorro developers recognise that civil society is best placed to independently monitor and assure the procurement process. To achieve this, 300 civil society organisations are granted free annual licenses to a business intelligence programme, which contains a suite of tools for analysing markets and the performance of buyers, suppliers and bidders.

One of the organisations with a licensed business intelligence account is the All-Ukrainian Network of People Living with HIV, which has 25 regional branches. The organisation is using ProZorro to review the procurement of HIV/AIDS centres, TB clinics, sexually transmitted disease clinics and drug dispensaries to identify fraud, inefficiency and waste. It plans to train its members to use this information to write letters of formal complaint and to conduct public advocacy at the regional and national level.

ProZorro developers also continue to refine the system based on performance and procurement requirements. Recent additions include a Red Flags risk management system, a library of typical specifications and an online course for contracting authorities. In November 2016, a sister platform to ProZorro, DoZorro, was launched to facilitate additional monitoring. DoZorro will allow public bodies and suppliers to report on their experience of working with one another and using ProZorro. The monitoring tool aims to capture qualitative information about relationships between participants and best practice.

## What next?

Ukraine recently ratified the WTO procurement pact, which opens Ukraine's procurement markets to international competition and gives its companies access to WTO members' markets.<sup>85</sup> This reflects the country's trajectory towards greater trade liberalisation and suggests its markets have greater integrity.

Yet the country remains highly corrupt. Enforcement against officials in the former regime has been notably weak. "You can't catch a big fish with a small, thin rod," Prime Minister Volodymyr Groysman said when asked why no "big fish" had been convicted,<sup>86</sup> but rampant bribery in the judiciary may also be a factor.<sup>87</sup>

However, the development of ProZorro triggered a complete overhaul of the technical and legal basis of Ukrainian public procurement in little more than two years. Early signs on value for money and competition are encouraging – although they also show there is more work to be done. ProZorro and its stakeholders have impressive momentum and believe they can build their early success into long-term reform. ProZorro developers are also looking to support reforms in other States and have provided help to the Ministry of Finance in Moldova.

Finally, the MoH is in the process of awarding new contracts for 2017 to Crown Agents, UNDP and UNICEF and analysing the results of 2016. From 2019, the procurement of pharmaceuticals will become a function of government again. There are numerous policy initiatives underway to ensure that the transition is smooth, that capability in Ukraine is developed to ensure sustainability of the reforms and that the systems in place are informed by the experience of using international organisations.

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<sup>85</sup> [https://www.wto.org/english/news\\_e/news16\\_e/gpro\\_22jun16\\_e.htm](https://www.wto.org/english/news_e/news16_e/gpro_22jun16_e.htm) [Accessed: 12/12/2016].

<sup>86</sup> <http://www.independent.co.uk/news/world/europe/corruption-overshadows-ukraine-imf-aid-bailout-a7317066.html> [Accessed: 12/12/2016].

<sup>87</sup> <http://www.reuters.com/article/us-ukraine-crisis-parliament-reform-idUSKCN0Y01NY> [Accessed: 12/12/2016].

# 4. Conclusion

## Governments benefit from civil society innovation

Governments made savings and drafted better policy by responding to innovations in public procurement from civil society. In Nigeria, a civil society organisation (CSO) followed the money through the construction procurement cycle and revealed poor value for money and shortcomings in public policy. The government is now working constructively with the CSO to implement the Open Contracting Data Standard (OCDS), as it aims to achieve better value for money in a new wave of construction procurement.

In Ukraine, an entire electronic procurement (e-procurement) system was developed by volunteers who wanted to fight corruption and improve the business environment. After piloting the platform, the government saw the impact on public budgets and passed legislation to make the use of ProZorro mandatory. In Honduras, reforming politicians recognised that civil society's role as an independent monitor builds integrity into administrative systems. After a series of investigations, CSOs were granted full access to procurement records in an agreement with the government, which also requires them to report publicly on their findings.

Governments get big returns on small investments by opening up healthcare contracting data. The relatively simple tasks of consulting stakeholders, publishing information and then responding to the results, has helped governments save money, correct policy, enhance markets, detect corruption and ultimately improve healthcare outcomes.



## The “golden triangle” is the gold standard

The active participation of business was an important element of open contracting success. In Honduras, the government entered a partnership with a bank to ensure timely payments, which restored faith in the business community and helped to reduce bribery. After assuring business that they could compete fairly for contracts, competition is improving value for money in Ukraine.

ProZorro developers also aimed to leverage the transparency of the bidding process to add a layer of integrity to procurement. Businesses have both the motive and expertise to investigate flawed tendering. In Nigeria, one of the latest aims of civil society is to engage with the business community and understand its perspective.

Procurement markets cannot function without the engagement of companies. Yet the *raison d'être* of business is to make profit and this needs to be constructively weighed against the priorities of government and civil society – as it was in Ukraine. A balanced golden triangle, between civil society, business and government, fosters mutual trust and participation, which improves procurement outcomes.

## Accountability cannot be achieved by open contracting data alone

Open contracting data has revealed collusion and suspicious bidder behaviour. In Honduras, shell companies that existed only on paper were used to distort market prices. In Nigeria, 26 different companies won 26 contracts in a supposedly competitive tendering procedure with precisely the same bid. However, a full investigation of these companies is hampered because neither country has laws on the disclosure of beneficial company ownership. This limits the monitoring and enforcement capacity of not only civil society, but the government and private sector too.

Open contracting data becomes a more effective accountability tool when it is linked and joined up with other data. Governments publish a range of datasets to improve accountability including registers of companies, the assets and conflicts of interest held by public officials, and records of donations to political parties. Linking this information to open contracting data would further improve the utility of open accountability data.

Specifically, a register of beneficial ownership, which reveals the identity of the ultimate owner of a bidding company, would help to ensure that any corrupt forces manipulating markets and subverting tender procedures, can be held to account and prevented from bidding in the future. To become practically useful, this information needs to be published in an interoperable format that is compatible with the OCDS.



## Opportunities, threats and alliances in procurement reform

Political shifts and upheavals created small windows of opportunity for big reforms. In all cases, civil society coalitions worked with newly-appointed, high-level government officials who were supportive of the open contracting agenda. Civil society organisations have suggested that the political will to reform institutions diminishes quickly following a new appointment. Politicians and senior officials gradually assume responsibility for the mismanagement of administrations or become convinced that systems are fundamentally unworkable. Reformers must think fast.

Civic reformers also formed other alliances. In Ukraine, activists and software companies, among others, married their vision and technical expertise into a strong proposal for action. In Honduras and Nigeria, CSOs worked closely with investigative journalism platforms, which increased their collective capacities and audience reach.

Vested interests that profit from corrupt and inefficient administrative systems resisted reforms and protected themselves from prosecution. In both Honduras and Ukraine, it has been very difficult to prosecute corrupt officials due to vulnerabilities in the justice system. While a culture of impunity remains, so will the willingness to subvert transparency and democratic norms.

But, reformers working from above and below have, in tandem, achieved significant results. Acting quickly and boldly to create relationships with senior officials or civil society groups during times of political change appears to drive success.

## Participation, not technology, is the key to success

The perfect case study, in which theory becomes reality, does not exist. In Nigeria and Honduras, freedom of information laws were used to make e-procurement data public, before further innovation and investigation took place. In Ukraine, Crown Agents saved on average more than double what the ProZorro system achieved, without implementing what we would strictly describe as open contracting (while it boosts integrity through participation, transparency is limited). What do we learn from this?

The technical side of open contracting is important and stakeholders benefit from using clear standardised tools, like the OCDS or updated Integrity Pacts (IPs). They save everyone time and money and raise the chances of successful implementation. But context-specific factors also muddy the water and, in all cases, stakeholders made necessary adaptations.

The success of each case study owes more to the participation of civil society, business and government figures. In all cases, governments have listened to data-users and designed systems responsively around their needs. Broad stakeholder participation secured and embedded support among communities of information users, whether CSOs, journalists, academics, businesses or others. This, combined with government's readiness to close feedback loops, was the secret of their success.





