Submission to the thematic report of the Special Rapporteur on Freedom of Opinion and Expression to the UN Human Rights Council: "Freedom of Opinion and Expression and Sustainable Development - Why Voice Matters"

Open Contracting Partnership
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Overview of freedom of opinion & expression, public procurement and participation for sustainable development

Open Contracting Partnership is a registered non-for-profit organization active in over 50 countries to make public procurement open, better and fairer. We are regular contributors to the UN Convention Against Corruption processes, having been featured as experts on technical assistance and in presenting to the Convention's working groups and expert groups.

We urge the Special Rapporteur to include public procurement data and information as one of the highest impact examples of how access to information and the ability to freely comment on, reuse and analyze public information and data leads to better spending decisions that benefit more citizens, especially women and marginalized groups. (Specific examples included with each Q&A below in this submission)

One in every three dollars spent by a government is on a contract with a company, totalling more than $13 trillion globally each year. How this money is spent has a direct impact on sustainable development outcomes across every single one of the SDGs, and public participation, feedback and oversight is critical to ensuring public goods, works and services are delivered at the highest value for money and greatest benefit to citizens. Of particular note is the way in which access to this data by marginalized communities and women coupled with the ability to file complaints or give feedback on public procurement leads to better public service delivery for these groups, making sure their needs and interests are central to decision-making.

Responses to questions posed by the Special Rapporteur:

In your view, how does the right to freedom of opinion and expression contribute to the achievement of the SDGs? Please provide examples,

where possible, with concrete data relating to impact. Please also mention relevant laws, policies and other measures.

The right to freedom of opinion and expression empowers academia, civil society, the private sector and the media to give feedback to governments on the delivery of critical public works, goods and services. Coupled with this is the right to access information, notably from our perspective information and open data on public procurement. We have seen how dedicated complaints and feedback mechanisms have allowed businesses, academia and civic actors to support governments in spotting corruption, fraud, mismanagement and broader inefficiencies so that funds dedicated to sustainable development objectives can be better spent. The SDGs agenda looms large, so every dollar must count.

Evidence:

[How Albania's e-complaints system reduces red tape for government suppliers](#) - Albania's Public Procurement Commission (PPC) reduced the number of decisions appealed in court, from 10% in 2020 to 4-5% as of July 2022. Suppliers save an estimated $300 – $1000 and fewer PPC decisions are late: halving from 2020 to 2022. The new online archive of complaints and the openness in PPC's operations is building trust among stakeholders: 74.6% of economic operators think the system is more efficient, while 82.3% say it increases fairness when handling complaints.
- SDG 8 & 16

[How Nuevo Leon increased participation and competition in its public infrastructure](#), improving private-public partnerships and civic monitoring of public work. Infraestructura Abierta went live in 2020 and now provides details of 187 projects and 355 contracts across Nuevo Leon. Since the implementation of the open contracting reforms, the state has seen a high average number of bidders per tender of above 6.5. Despite a transition to a new government, reforms continue. The number of buyers included has increased from 18 to 31, and there have been no single-bid tenders in 2021 and 2022. 53% of the winning suppliers were new, securing contracts for the first time.
- SDGs 6, 7, 8, 9, 10, 11 & 16

[Partners in crime prevention: How civil society and government worked together to open up public contracts in Indonesia](#) - Public complaints that used evidence gathered from the platform have led to prosecutions and convictions in at least five high-profile corruption cases, covering at least US$18 million. Over twelve years and several leadership changes, LKPP has maintained a consistent collaboration with NGO Indonesia Corruption Watch that allows civil society actors to access public contracting information through a user-friendly website and to report on corruption risks and other irregularities. The anti-corruption agency KPK, which often relies on public tip-offs, has also handled a growing number of procurement corruption cases in recent years, with an increase from 9 cases in 2013 to 15 in 2014 and as many as 47 cases in 2021. Recent upgrades to the Opentender.net platform have expanded the scope and speed of the monitoring process. Since 2021, state auditors are being trained to use the Opentender.net

tool, with initial results suggesting the platform could improve the efficiency and coverage of audits by as much as 200% (from 10 to 30 issues audited per quarter) and reduce the duration of audits from 2 days down to 30 minutes.

- This contributes directly to SDG 16, and due to the variety of sectors for which contracts are reviewed, has an impact on spending effectiveness across all SDGs, a recent notable example being investigations into Covid 19 healthcare spending.

See also the new Article 19 report on access to information to combat corruption, including a section on public procurement.

Are there restrictions or other challenges to freedom of expression or access to information that affect the delivery of public services and achievement of economic, social and cultural rights in your country? Which groups of people are most affected by these restrictions and in what ways? What measures would you recommend to address their problems?

In the case of public procurement, the biggest challenge is the failure to meet UNCAC and UN General Assembly Special Session on Corruption commitments to publish open data on the whole cycle of public procurement. Without this information, citizens cannot be informed and exercise their right to participate in monitoring, oversight and improvements to public spending. The second barrier is over-redaction of public contracts beyond what is necessary for reasons of commercial confidentiality and intellectual property rights. Our Mythbusting Confidentiality Report highlights how these concerns can be managed and balanced. Scandals in medicines and PPE procurement demonstrate the high cost to public health as an example of when over-redaction and delay of publication can lead to a negative impact on critical SDGs, in this case SDG 3. An example of this is the UK, where a VIP lane, significantly delayed publication of contract data and over-redaction of information led to inadequate PPE during the pandemic and significant damage to public trust. The persons most affected by these opaque deals are usually the poorest and already marginalized who cannot obtain lifesaving treatment, basic education, or other critical development needs due to inflated prices of public contracts, poor use of public funds, or corruption.

Resources:

World Bank guidance on governance and openness in Public Private Partnerships

Open Data Contracting Standard for PPPs

What factors affect the right to expression and information of women and girls, indigenous peoples and other poor and marginalized communities

and their access to information and communications technology in your country? What legal, policy or other measures has the government taken to overcome these problems? How effective are these measures and what improvements would you recommend?

In public procurement, women and minorities are affected in two ways: 1) They cannot access information on public procurement spending plans to be able to provide input on how essential works and services in their community are delivered. For example, if a bridge or dam is to be built, it is critical that a local indigenous community can monitor and input into the procurement planning to protect their environmental and cultural rights. 2) They cannot access public contract opportunities as suppliers because the entrenched incumbents belong to the majority "in group" of society, often male, and often of the majority racial, ethnic, political or religious group.

Evidence:

Joint report with UN Women: [Empowering Women through Public Procurement and Inclusive Growth](#)
- SDGs 5 & 8

[Inclusive infrastructure: how open procurement is putting informal settlements on the map in Argentina](#) - A civic activist group – the Civil Association for Equality and Justice (ACIJ) – worked with residents in Villa 31 to collect data and track all the public works that had been promised. ACIJ then supported the villa community to use different tools and approaches to engage city officials and contractors in planning, prioritizing, and delivering the works most urgently needed. Their analysis of what was working and what was missing kickstarted a productive dialogue between the inhabitants of the settlements and the city government. As a result, a new centralized unit in the city government was created to strengthen the monitoring and evaluation of the public works in Villa 31, to increase inclusion of residents in the planning of projects, and consolidate the information available. This civic monitoring partnership model is now being expanded from Villa 31 to other informal settlements, reaching more than 200,000 inhabitants in the city.
- SDGs 1 & 11

[Disaster management in Assam, India](#) - How a social enterprise startup Civic Data Labs is using procurement data, flood data and socio-economic indicators to better allocate flood prevention resources to the state's poorest & most vulnerable communities.
- SDGs 1, 9, 11, & 13

[Using data analysis to spot gaps in access to maternal and child health services](#) in India - Researchers at CivicDataLab used procurement data, health data and geospatial data to review public health spending in Assam, India. They developed a method to verify if the money is reaching districts where mothers and babies need it most. Their initial findings suggest it isn't, as fewer maternal and child health tenders are published for districts with high maternal and

infant mortality rates, but more complete data would allow them to draw more accurate conclusions.
- SDGs 3 & 5

[How poor procurement prevents patients from getting HIV treatment](#) in Latin America, and why access to information and the right to use it could help patients change things. A short report on the regional state of play with diverse examples.
- SDG 3

[How Ekiti State in Nigeria is using public procurement to improve economic opportunities for women-owned businesses](#)
- SDG 5 & 8

[How patients in Moldova used procurement data and their right to free expression to boost medicines access](#) - Moldova has some of the highest rates of HIV and tuberculosis in Europe, but the medicines used to treat these conditions are often very expensive or not available. Moldova's transparent system for purchasing medicines has become an invaluable tool for fighting the country's longstanding epidemic of communicable diseases like HIV/AIDS, tuberculosis, and hepatitis C and the coronavirus. This open contracting approach is part of a series of medical procurement reforms with an unexpected leader: patients from some of the most vulnerable groups in society who've worked with open-minded public health and procurement experts to drive down the cost of drugs without compromising on quality, freeing up funds for other critical preventive and curative care measures. Thanks to this collaboration the country saved 15.4% on medical procurement overall – including 19% saving on HIV medicines – and enabled real-time monitoring of US$60 million worth of medical contracts and medicine supply and delivery to hospitals.
- SDG 3

How can information and communication technology companies better engage with governments and communities to promote sustainable development?

In building and maintaining e-procurement systems and databases, IT providers should be designing these systems with public facing platforms for data and information display in mind. To date, too much procurement data is published in hard to use formats, or highly technical databases that the average individual cannot navigate in a meaningful way, if the data is published at all. Furthermore, companies should be compelled to conduct user experience testing for feedback, bidding and complaints systems and provide these services in mobile-friendly formats, to broaden accessibility.

Report: [Fulfilling the promise of eGP reforms in Africa](#)

What laws, policies and practices exist in your country to facilitate public participation and access to information and data relating to sustainable development? Where have there been successes, or conversely challenges, with facilitating access to information and data relating to sustainable development in relation to a) governments and b) companies?

Our TrustLaw Legislative Guidance provides a good overview of best-in-class open contracting legislation that enables stronger public participation and feedback on public procurement to shape optimal sustainable development outcomes in an efficient and inclusive way.

Evidence:

Open Contracting Legislative Guide in partnership with Reuters TrustLaw. The review covers Chile, Colombia, Paraguay, Portugal, South Korea, Ukraine, the United Kingdom and the United States – in addition to two supranational legal frameworks: the World Trade Organization's Revised Government Procurement Agreement (GPA), covering 48 WTO members, and the European Union's Public Procurement Directive, which covers 27 Member States.

Ecuador: Procurement reform increases public participation - Open competitive procedures increased by 10%, the use of special regimes dropped by 19%, vendor participation increased by 17%. Civil society strengthened its oversight over procurement processes, including securing a legislative victory that makes access to contracting data a right. A growing network of organizations is using procurement data as part of their work, including identifying corruption risks and tracking service delivery, leading to 172 legal cases investigating questionable Covid 19 pandemic purchasing.
- SDG 16, 3

What role does the media play in promoting sustainable development in your country? What challenges and threats do journalists face in accessing public information or reporting on or criticizing development policies?

The media is an important user of public procurement data, allowing them to conduct investigations into government's deals with the private sector and monitor for wasteful or suspicious activity as watchdog. Journalists face barriers in this regard including procurement data that in of poor quality, out of date, incomplete or not machine readable, a lack of feedback, reporting and complaints mechanisms to report suspicious activity for government comment and investigation, and a lack of protection for the news stories published about investigations that find waste, fraud and corruption.

[Overview of how the media reports on public procurement](#)

[Watchdog journalism in Guatemala and Plaza Publica's procurement investigations](#) - short story covering one media outlet's efforts using contracting data

Do you have any specific recommendations that you think the Special Rapporteur should make in her report?

It is critical that the Special Rapporteur cite access to open data on public procurement and the ability of citizens from academia, civil society, media and the private sector to freely share opinions and insights as feedback to the government on public spending. Government alone cannot deliver or monitor every project to the last mile, it must work with a range of stakeholders to both provide essential goods, works and services in the delivering of sustainable development, and monitor that these are delivered in a timely, lawful, effective manner.