# A New Generation of Public Control

Edited by **Eduardo Bohórquez** and **Nora Etxaniz**

citizens&markets

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## citizens&markets

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MEXICANA

**Transparencia Mexicana** (TM) is a non-governmental organization that approaches corruption in Mexico from a comprehensive perspective. It does so through public policies and private stances that transcend political slogans to bring about specific changes in the institutional framework and build a rule-of-law culture in Mexico. TM was established in 1999 as the Mexican Chapter of Transparency International the global coalition devoted to combating corruption. www.tm.org.mx.

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# A New Generation of Public Control

Ways of promoting open governments:
Concepts, tools and experiences

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## Cases and Experiences

# ABBREVIATIONS

**ACIJ** Asociación Civil por la Igualdad y la Justicia/Association for Equality and Justice (Argentina)

**AMARTA** Agribusiness Market and Support Activity

**AU** African Union

**BGR** Bundesanstalt für Geowissenschaften und Rohstoffe/ German Federal Institute for Geosciences and Natural Resources

**BIS** Department for Business, Innovations and Skills (UK)

**CFS** Conflict Free Smelter

**CIMIC** Civil-military co-operation

**CIPCE** Centro para la Investigación y la Prevención de la Criminalidad Económica/Center for the Investigation and Prevention of Economic Crimes

**CIS** Common Industry Standards

**ComprasNet** Portal de Compras Do Governo Federal/ Federal Government Procurement Web

**CoST** Construction Sector Transparency Initiative

**CSO** Civil Society Organisation

**CSV** Comma Separated Value (a computer data storage format)

**CTC** Certified Trading Chains

**DCAF** Geneva Center for the Democratic Control of the Armed Forces

**DFID** Department for International Development (UK)

**DPA** Data Protection Act

**DPADM** Division of Public Administration and Development Management

**DRC** Democratic Republic of Congo

**E-Gov** Electronic Government

**EICC** Electronic Industry Citizenship Coalition

**EITI** Extractive Industries Transparency Initiative

**EPPP** Electronic Public Procurement Platform (Turkey)

**EU** European Union

**FAO** Food and Agriculture Organization

**FEATI** Farmers Empowerment through Agricultural Technology and Information

**FFS** Farmer Field School

**FOIA** Freedom of Information Act

**GeSI** Global e-Sustainability Initiative

**GIZ** Deutsche Gesellschaft für Internationale Zusammenarbeit/German Ministry for International Development

**HAI** Health Action International

**HCI** Human Capital Index

**ICAP** Instituto Centroamericano de Administración Pública/ Central American Institute for Public Administration

**ICGLR** International Conference on the Great Lakes Region

**ICI** International Cocoa Initiative

**ICT** Information and Communication Technology

**ICTs** Information and Communication Technologies

**IDPs** Internally Displaced Persons

**IFBEC** International Forum on Business Ethical Conduct

**iMPACT** Mars Partnership for African Communities of Tomorrow

**ISO** International Organization for Standardization

**IT** Information Technology

**ITRI** International Tin Research Institute

**iTSCi** Tin Supply Chain Initiative

**ITU** International Telecommunications Union

**KONEPS** Korea On-Line e-Procurement System

# ...ABBREVIATIONS

**KPK** Corruption Eradication Commission (Indonesia)

**MICIT** Ministry of Science and Technology of Costa Rica

**MOD** Ministry of Defence

**MSD** Multi-stakeholder Dialogue

**MSG** Multi-stakeholder Group

**MSI** Multi-stakeholder Initiative

**MSP** Multi-stakeholder Platform

**NAFODU** National Foundation for Democracy and Human Rights in Uganda

**NATO** North Atlantic Treaty Organization

**NGO** Non-governmental organization

**OECD** Organization for Economic Co-operation and Development

**OGP** Open Government Partnership

**OSI** Online Service Index

**PITC** Pharma Philippines International Trading Corporation

**PPA** Public Procurement Authority

**PPA** Public-Private Alliance for Responsible Minerals Trade

**PPL** Public Procurement Law

**RCM** Regional Certification Mechanism

**RELUFA** Reseau de Lutte contre la Faim/Network Fighting Hunger in Cameroon

**RPDH** Rencontre pour la Paix et les Droits de l'Homme/ Meeting for Peace and Human Rights

**RSCE** Roundtable for a Sustainable Cocoa Economy

**RWI** Revenue Watch Institute

**SAESSCAM** Service d'Assistance et d'Encadrement du Small Scale Mining/Technical Assistance and Training Service for Small-Scale Mining

**SME** Small and Medium Enterprise

**SNA** Social Network Analysis

**STCP** Sustainable Tree Crops Program

**TI-DSP** Transparency International UK Defence and Security Programme

**TII** Telecommunications Infrastructure Index

**UN** United Nations

**UNGoE** UN Group of Experts on the DRC

**UNDESA** United Nations Department of Economic and Social Affairs

**UNDP** United Nations Development Programme

**UNPAN** United Nations Public Administration Network

**USAID** United States Agency for International Development

**W3C** World Wide Web Consortium

**WCF** World Cocoa Foundation

**WHO** World Health Organization

**XML** Extensible Markup Language (a set of rules for encoding documents)

# PREFACE
# INITIAL REFLECTIONS

**MARCELA ROZO »** SENIOR OPERATIONS OFFICER, World Bank Institute

This publication compiles a valuable set of experiences and initiatives focused on opening up governments and data, and bringing together multiple stakeholders to solve complex development problems. Not a single actor will be able to find all solutions and implement them on their own. We need joint action for increased ownership and sustainability. That is why at the Open Contracting Partnership, we foster disclosure and participation in public contracting at country level and across other sectors and global initiatives as those described in this book and are working with multiple stakeholders across the world to make open contracting a new norm.

**PAUL MAASSEN »** CIVIL SOCIETY COORDINATOR, Open Government Partnership

A new generation of public control, in a way, goes far beyond 'open government'. It reflects on open societies, or co-created societies. Bringing (back) the citizen into shaping his or her lived realities. And high time it is. Global research shows that the majority of the citizens do not trust leaders – whether in politics or in business. But governments also do not yet dare to rely on the citizens in giving them a real role in governing. There is no alternative though, as these excellent examples show. Bringing in the citizen brings in more brain capacity and ideas than any government can have, more watchful eyes than any (self) regulating or auditing body, more hands than even the biggest bureaucracy.

**PETTER MATTHEWS »** EXECUTIVE DIRECTOR, Construction Sector Transparency Initiative (CoST)

Improvements in transparency and accountability are helping to reconfigure the relationship between states and citizens and produce a range of positive benefits. I support these efforts, but I also worry that the debate is often characterized by a lack of critical thinking. It is important that we weigh the costs of transparency against the benefits, that we ask 'who decides', what is disclosed and what remains hidden, and that we remain alert to how the technologies that enable transparency can also be used to surveil citizens. We should question all assumptions.

# ...PREFACE INITIAL REFLECTIONS

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**JONAS MOBERG »** HEAD OF SECRETARIAT, Extractive Industries Transparency Initiative (EITI)

The New Generation on Public Control is not one that sees transparency, openness and civil society participation as nice add-ons to public decision-making. The new generation expects it from their governments and from private companies. Transparency and openness are also increasingly becoming part of the reality. While by no means perfect, this is no more true than in the extractive sector.

Practices are still patchy, but they are changing rapidly, with contracts being published and tax payments disclosed in a growing number of countries. Making transparency and openness practically meaningful, truly leading towards improved accountability, will take a wide range of efforts. Big data needs to be packaged, used and understood. Standardisation of data formats and new technological solutions will play their part. Multi-stakeholder or collective governance endeavours will sometimes be important in providing oversight and forums for using information. Collaborative governance is still in its infancy and the new generation will have to be one of governance entrepreneurs, learning, experimenting and being prepared to take risks in engaging with a variety of stakeholders. The contributions in this publication bring experience valuable for the road ahead.

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**DELIA FERREIRA »** MEMBER OF THE BOARD, Tranparency International

I welcome this new publication by Transparencia Mexicana, which will greatly contribute to the debate on open government and citizens' participation. Open government is more than open data. Open government is a new way to engage citizens in the decision making process. Access to information and proactive disclosure are just the tools to guarantee informed participation, meaningful oversight and a strong democracy.

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**ALMUDENA OCEJO »** EXECUTIVE DIRECTOR, Centro de Contraloría Social y Estudios de la Construcción Democrática (CCS CIESAS)

There are many ways to think the relationship we citizens have with our government. One of these ways is the democratic control practice of what is public, which seeks to build a relationship based on an informed and responsible involvement of citizens for the improvement of the government's performance and the public decisions, going beyond voting governments. This form of relationship implies that the State is an actor responsible of steering society, although not the only one. But specially, that we citizens can get involved in the definition of the present and future of our communities – territorial or of identity (contribution to the debate of public priorities), but also having something to say about those priorities are translated in actions, programs and government policy (how government is exercised).
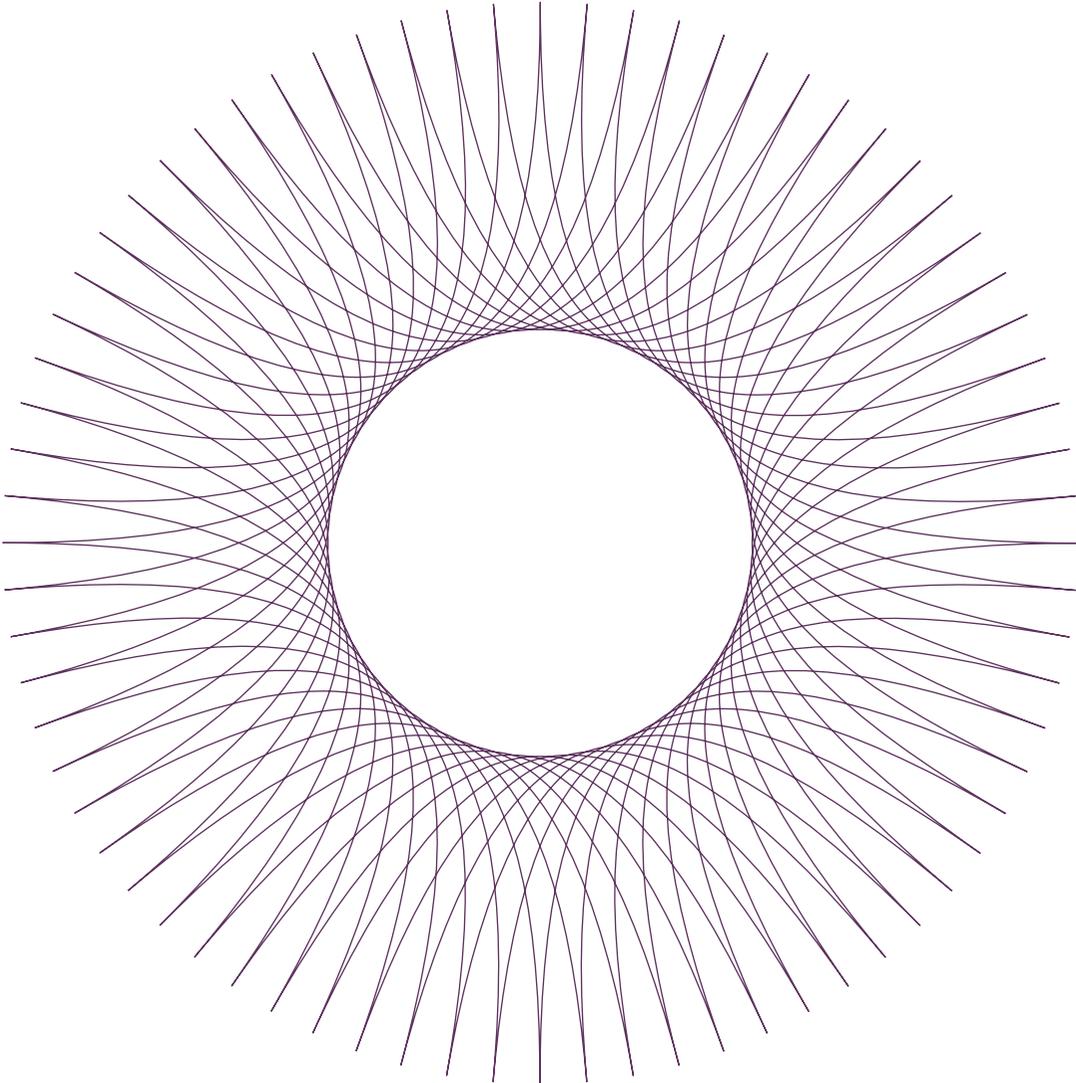
# ACKNOWLEDGMENTS

The publication of this book has been possible thanks to the efforts of many individuals. First of all, we would like to extend our gratitude to the members of Transparencia Mexicana's board for believing in the project, and supporting our ambition to conduct research on durable governance solutions in this changing and challenging world.

We also want to acknowledge the commitment and dedication of Transparencia Mexicana's team, in particular Rafael García, Gabriela Ramírez, Carla Crespo and Araceli Cordero, for their boundless energy and knowledge, which helped us better communicate our findings. Additionally, we thank the rest of the staff for their invaluable contributions and ideas, which helped us further elaborate our discourse and improve our arguments within the framework of the Citizens & Markets paradigm.

Likewise, we need to recognize Philippa Williams's contribution, under whose editorial guidance the following pages acquired a meaning as a whole.

We must thank Marcela Rivas as well, who transformed this document into its final form with her creativity and tireless dedication.

Our final acknowledgment is for the authors of this book. We are grateful to their commitment and competence and above all for generously sharing with us their theories, knowledge and ideas, which gave us valuable food for thought to be able to imagine more fair, inclusive and just societies.

# From government oversight to social alliances

**EDUARDO BOHÓRQUEZ »** EXECUTIVE DIRECTOR, Transparencia Mexicana

**NORA ETXANIZ »** PROJECT COORDINATOR, Transparencia Mexicana

A B S T R A C T

Discussions concerning democratic control and new models of governance can no longer follow the patterns of the past, and this is why on the non-government side it is important to not only propose, but actively participate in the shaping of more democratic and sustainable models, and more importantly, social change generating models. This article analyzes the risks and opportunities concerning new social alliances created recently, after NGOs have moved into a new space, beyond being mere social watchdogs. The complexity of current social relationships demands new forms of alliances involving all actors. Citizens today are more educated and thus more demanding, and are increasingly calling for broader accountability from governments and the private sector. Furthermore, as civil society is becoming increasingly organized, maintaining such levels of accountability is becoming unavoidable. In this framework, social alliances provide an interesting environment for the joint construction of public policy in which accountability becomes the norm. However, merely putting all the actors around the table does not guarantee successful results: it is necessary, among other things, to work cooperatively in an environment of trust and transparency, and thus the idea of social alliances cannot be divorced from present trends such as Open Government. However, such alliances have now existed for over two decades, ensuring that civil society has information outlining efforts that have been successful and those that have been less effective. This information allows us to identify obstacles, risks and opportunities to push these new governance models forward, assuming that they are, at least in theory, more participative and democratic than the classic ones.

We already know that the world we live in is highly volatile and ever changing, but we could not have known some decades ago that new technologies would so rapidly change the way we engage with others and the kind of relationships we build as social actors in this globalized society.

As was discussed in the first book of this series, the roles of each social actor (civil society, government and private sector) currently overlap: there is no clear line separating them. A citizen can have simultaneous different interests: he/she may want a state-owned company of his/her native country to grow and at the same time he/she might be a shareholder of a foreign company competitor of the first one, and thus have a legitimate interest too in seeing that company grow and reap the profits, in other words, he/she will have divergent interests. In this context, the three social actors, government, civil society and private sector, meet to engage with each other in the market and potential for corrupt situations to arise from these relationships are not determined by the nature of each of these actors, but by the nature of the relationships established among them.[1]

In this globalized and interconnected environment we are living in, defending the public interest has become an increasingly complex issue since each one of the social actors can have diverging and sometimes contradictory interests, as outlined above. At the same time,

the growing complexity of social relationships makes it very difficult to really know where the power lies. That is why it is necessary to invent new models of governance, considering multiple points of view, and promoting new ways of engaging with each actor, who lays their cards clearly on the table.

In order to achieve this first we must deal with the alienation between policy-makers and society. Over the past few years, as modern democracies have been consolidated throughout much of the developing world, the ruling parties may have felt that they did not need to be held accountable, providing they maintained the appearance of democracy. This meant they could promote customer relations and act on their own behalf without having to offer any explanation, simply because they were "democratically" elected.

Likewise, private companies have seen unprecedented growth concerning their power at a global level thanks to economic globalization. The elimination of borders for doing business, the establishment of monopolies and the complicity of governments has resulted in poor levels of accountability by private companies. In turn, this situation has led to the existence of tax havens and the violation of workers' human rights with total impunity.

Civil society, for its part, has become increasingly organized and specialized. After having achieved significant progress concerning human rights throughout the 20th century, thanks to numerous social struggles, the establishment of modern democracies implied substantive changes to the pre-existing scenario, where seemingly the average citizen did not have the time nor the inclination to get involved in the "main stream political system". The changes saw a more structured social struggle, with civil society playing a more organized role in specialized action. This change came out mainly because of new technologies, which allowed the democratization of media in a context of growing inequality in which non-state actors, especially civil society organizations, have gained significant influence and, at the same time, have allowed the individual to have a voice.

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1   E. Bohórquez, D. Devrim (2012) Towards New Relationships between Citizens, Companies and Governments. En E. Bohórquez and D. Devrim "A New Role for Citizens in Public Procurement" (pp. 21-27). México, Transparencia Mexicana
http://es.scribd.com/doc/110224943/Citizens-and-Markets-%E2%80%93-A-New-Role-for-Citizens-in-Public-Procurement

This scenario is now changing more rapidly than some people could have imagined: governments have become aware that it is impossible to continue ruling for the citizenry and that they have to instead do it with them. Companies are getting involved in voluntarily initiatives pursuing accountability, not only because they have realized how a poor reputation can impact negatively on their results, but also because they are aware of the possible benefits of operating in a transparent and level playing field. Furthermore, civil society, as mentioned above, has gained significant influence, whether they choose a confrontational strategy (in many parts of the world, society has taken to the streets to demand accountability and ethical behavior from their representatives, and has achieved strategic and immediate changes), or a constructive collaboration (many NGOs have opted for creating alliances with International Organizations, governments or companies in order to boost social changes).

From a skeptical point of view, we could argue that both governments and companies have realized about the powerful thrust of civil society and feel they have no choice but to participate in this new democratic wave, but if we assume a more optimistic point of view, it may mean that governments, companies and citizens have realized that they have much more to win if they share their knowledge and that cooperation can bring benefits to all parties. Therefore, working together towards a common goal can make the decision-making process more simple and effective.

For one reason or another, both at an international and national level, multiple kinds of initiatives involving different social actors working together have developed rapidly. This boom of partnerships proves that classical inter-governmental diplomacy as we once knew it is in crisis[2] and that past methods of interacting are no longer possible. In this regard, multi-stakeholder initiatives (MSIs) have been implemented by private companies along with other actors, with a sectoral approach, as in the

case of the extractives industries with the EITI[3] initiative, where the interest of all social actors are represented around the table; likewise, governments are increasingly sharing their information and making transparency a priority, harnessing new information and communication technologies with the idea of ruling more openly. One such example is an initiative such as the Open Government Partnership[4] (OGP); civil society, for its part, is increasingly organized and is more proactive, their demands are better shaped and the proposed solutions are more effective and innovative. Another example of transparency initiatives is the one developed by Fundación Civio in Spain, in cooperation with other CSOs. The group built a website highlighting the question of lobbying, with the aim of making government representatives' hidden agendas more transparent.[5]

> *Defending the public interest has become an increasingly complex issue since each one of the social actors can have diverging and sometimes contradictory interests*

## What are social actors facing?

Governments may feel that they have reached a crossroad. On the one hand, they could try to cling to their old privileges, ruling by keeping citizens in the dark and facing an increasingly frustrated citizenry, without taking into account the power that society is gaining. Or, they can choose to "open up", governing in a

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2   Jens Martens, Multi-Stakeholder Partnerships, Future Models of Multilateralism? Dialogues on Globalization, Ocasional Papers, Berlin. Nº29/January 2007

3   The Extractive Industries Transparency Initiative (EITI) is a global coalition of governments, companies and civil society working together to improve openness and accountable management of revenues from natural resources. For more information please visit http://eiti.org/eiti

4   For more information please visit: http://www.opengov-partnership.org/

5   For more information please visit http://quienmanda.es/

more transparent way, sharing information, democratizing decision-making processes, even if for purely utilitarian reasons. However, the idea of sharing information can be an empty gesture, if this information is not relevant, or is not shared in a simple, user-friendly format.

> { *Governments, companies and citizens have realized that they have much more to win if they share their knowledge and that cooperation can bring benefits to all parties* }

Private companies can try to continue with the classic capitalist approach, where the only important thing is productivity and denying the necessity of getting involved in something that does not provide immediate benefits in monetary terms. However, introducing voluntarily new and more democratic models of governance benefits private companies in the medium term; which might be why companies have voluntarily engaged in initiatives in recent years, or even promoted internal measures to drive corporate social responsibility within a company. The reasoning would be that by adopting these new more democratic models their reputations are enhanced, they can improve their relationship with governments and better risk management. Therefore, corporate governance has become a gold standard for those companies wanting to position themselves at the top of their respective markets.

Organized civil society may feel that by approaching those in positions of power they may feel that they are "selling themselves" or at least in danger of losing their independence. This can happen particularly to organizations that take a confrontational "action-based" approach, but can also be the case for those wanting to work in a constructive collaboration scheme, because reputation is one of their most valuable assets. However, if civil society wants to have significant impact and provoke

social changes it will be necessary to get involved with other actors, otherwise their actions will not achieve sizeable results.

Ultimately all actors have something to lose and something to win when getting involved and participating in more inclusive models for decision-making. However, it is clear in our current society, where the complexity of relationships and social challenges keep growing that democratizing and opening the spaces where the decisions are made has become imperative.

## What to do?

Governments need to start perceiving civil society as an entity capable of not only monitoring their activity, but also capable of making valuable information inputs and innovative ideas. Making decisions that include different perspectives and points of view from all social actors can be advantageous: decisions will be enhanced by different kinds of knowledge and will integrate different types of approaches, therefore, those decisions may result in more accurate, participative and democratic public policies. One example of this collaboration between government and civil society is a recent experience in Mexico concerning the concept of Open Parliaments.

Companies should be subject to stricter accountability and transparency standards allowing public scrutiny, but that does not mean we should multiply to infinity the reporting mechanisms, which is currently the case to date (Global Reporting Initiative, Dow Jones Sustainability Index, Innovest, Global Compact). This can make it difficult for companies to communicate their progress on corporate governance in a clear, complete and understandable manner. To this end, participating in a multi-stakeholder group (MSG) that can be impactful, or establishing alliances with civil society, might reduce the multiple standards companies are subject to and at the same time regroup those standards, and reinforce them. By taking into account the great impact companies have in society, both in the one where they are physically established in and our global society, they should be open about any external influences they may have and participate in decision making in a transparent manner.

Civil society should harness the loopholes created in the system and act effectively, bringing innovative solutions and contribute with disruptive mechanisms to provoke minor changes, which produce major changes in the long term. This constitutes a considerable challenge, since the loopholes that civil society organizations have to take advantage of are not sometimes easy to identify, but definitely exist.

## A win-win relationship

These three social actors might establish a win-win relationship among them. If we want to achieve a more equal and inclusive world, and if we are aware of the fact that current governance models must change to include society's expectations, we shall then imagine new models where all actors, particularly society at large, may benefit.

MSI's, like other social alliances, provide an ideal scheme for collective action. In theory they incorporate a broad range of actors and the different concerns and perceptions they bring with them, can only improve the decision-making process, because the decisions made will have been derived from multiple perspectives and contain agreed solutions to complex and interconnected social problems. These kind of initiatives might have first been created with a different purpose such as: standard-setting to ensure a level playing field, information sharing, monitoring, etc., but they have definitely attracted a global interest. An interesting fact emerging from a World Economic Forum survey is that more than 90% of companies or top managers think that in the future partnerships between civil society, government and companies will have an important role in managing key development challenges.[6]

For a partnership between different actors to work, multiple elements are necessary, but one of the most important is that transparent communication channels are established among all participants. In this regard, we should take into account issues such as accessibility, the relevance and quality of information that is shared among participants, the languages in which it is available, if the formats used are user-friendly, etc.

However, despite having taken all necessary precautions concerning these issues and the group conformation in a very democratic and participative way, critics and problems may still arise. Two of the more recurrent criticisms are related to the setting up of the group and the results issued by it: on the one hand their legitimacy is called into question: Which stake-holders should be part of the group? Who appoints them? Why can some be part of it while others can't? Additionally there is the problem of efficiency: What results have we obtained so far? Has governance improved substantially in the concerned areas or participant countries? Another recurrent problem is mistrust. Some countries consider these multi-stakeholder partnerships to be a western model that does not resonate within their cultural values and principles[7].

> *The idea of sharing information can be an empty gesture, if this information is not relevant, or is not shared in a simple, user-friendly format*

Furthermore, the cost of participating in such initiatives can be very high, making it difficult for small and medium enterprises to get involved. Taking into account that these kind of companies represent a high percentage of a country's wealth[8], opting for a model whose cost can only be assumed by large companies, could be seen as quite undemocratic. This is why it is important to imagine more open, sim-

6   World Economic Forum. 2005. Partnering for Success. http://www.docstoc.com/docs/21045096/ppp

7   Liliane Mouan. Exploring the Potential Benefits of Asian Participation in the Extractive Industries Transparency Initiative: the Case of China. 2010. Business Strategy and the Environment. Bus. Strat. Env. 19, 367–376 (2010)

8   In OECD countries, for instance, these kind of companies represent between 60 and 80% of those offering jobs.

ple and less costly models in order to open the door to those small and medium companies.

It is also necessary to mention the possible fragmentation of the debate, resulting from the division of these kinds of partnerships by sectors, as if the issues they are willing to regulate were isolated compartments, whereas most of these issues are interconnected. The fact of being held accountable on each one of the established thematic partnerships separately, as mentioned above, can involve a Herculean task, manageable only by a small percentage. The sheer volume of reporting might necessitate taking general and inconclusive results, which may lose all sense and meaning.

> *If civil society wants to have significant impact and provoke social changes it will be necessary to get involved with other actors*

To overcome these problems, it will be necessary to establish protocols adapted to the place where they will be implemented and individualized schemes, which include clear rules for participation preventing favoritism and intrusiveness, and at the same time requiring democratic standards to all participants. Having said that, it must be recognized that social MSI's can only be a good idea, as evidenced by the fact that for the past few years, the model has constantly been replicated. However, it is important that they achieve more tangible and positive results related to evident progress achieved on issues concerning good governance and accountability, as proven in a number of MSI's that have been in place for a number of years.

### If these new models work:

Governments can feel they are more closely connected to society, which makes decision making process more accurate as it takes into account others' opinions and ultimately "opens" the government up to the public. To achieve this, it is important to harness new technologies and foster platforms with the aim of making participation as simple as possible. A new form of understanding relationships must be established between governments, civil society and the private sector, which in turn is directly linked to the idea of social partnerships in the paradigm of Open Government.[9]

Companies shall start ideally seeing economic benefits of leveling the playing field and acting in accordance with the rules. If we maintain that no private enterprise wants to operate in an opaque environment in which both written and oral rules are unknown, then by agreeing to participation rules and a monitoring process around their operations, the company can only be reap positive results.

Civil society organizations would see their real impact multiplied, because they would be working closer to the key decision-makers and moving from a position of awareness-raising to a real advocacy, one where they have the right and the power of expressing their opinions, and have influence on public policies. Furthermore, this would give them the influence to promote real charge, and partake in the construction of society.

The experience on the issue of Open Parliaments in Mexico has become a successful example of collaboration between different social actors. In July 2013, an agreement was signed between the Legislative Assembly of the Federal District and Transparencia Mexicana. In this agreement the legislature committed to boost the Open Parliament agenda within the institution. Following this, and based on the ten points outlining a minimum standard about what an Open Parliament should be, concrete actions, which give content to the agreement and provide orientation to other legislatures willing to make progress in that agenda in a specific way – have been carried out. It is im-

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9   This is a new form of relationship between governments and citizens that is defined by being a two way contract and generates a situation by where governmental information is shared and citizens are invited to participate in public affairs.

portant to note that Transparencia Mexicana has been contacted by other legislatures that are willing to promote the Open Parliament agenda in their operations.

The reality is that all three actors do share common objectives, maybe each one of them has different reasons for their involvement, but the three of them – government, private sector and civil society, want stable, free, democratic and productive societies. This can only be achieved if new participative and transparent models of governance are implemented, where all interests are represented and the decisions which affect society as a whole, are reached with the greatest possible consensus from all social actors. To do so, we must open communication channels, share accurate and easy to understand information with the average citizen, making social agreements binding for everybody.

## Conclusion

Governance models must change because society is requesting it. The global political and social context needs a thorough rethinking of the way in which social actors relate to one another, because we know that continuing with the same models as used in the past will no longer work. There are some good examples of successful initiatives in which different social actors participate and make progress on governance issues. The next step should imply consolidating those models and joining efforts to avoid duplication of work, but most of all to achieve efficiency and effective advocacy: we need tangible results to encourage the participation of all social actors because it is only in this way that we will be sure that their involvement will provoke social changes.

On the other hand, in addition to focusing on the results, we should also review our expectations and be more cautious with the goals pursued by the partnerships, the choice of participants and the forms of participation. The effective changes needed to achieve more inclusive, fair and transparent societies will be possible only if the nature of the relationships between governments, private sector and

> *The global political and social situation needs a thorough rethinking of the way in which social actors relate to one another, because we know that just continuing with the same models as used in the past will no longer work*

civil society change: if we overcome the mutual mistrust and we build relationships based on common interest. To achieve this it will be necessary to imagine new models adapted to the particular context, taking into account the particular characteristics, values and socio-economic situations, among other factors, of where we are willing to implement the model and avoid the replication of models pretending to be global but which in reality exacerbate existing inequalities.

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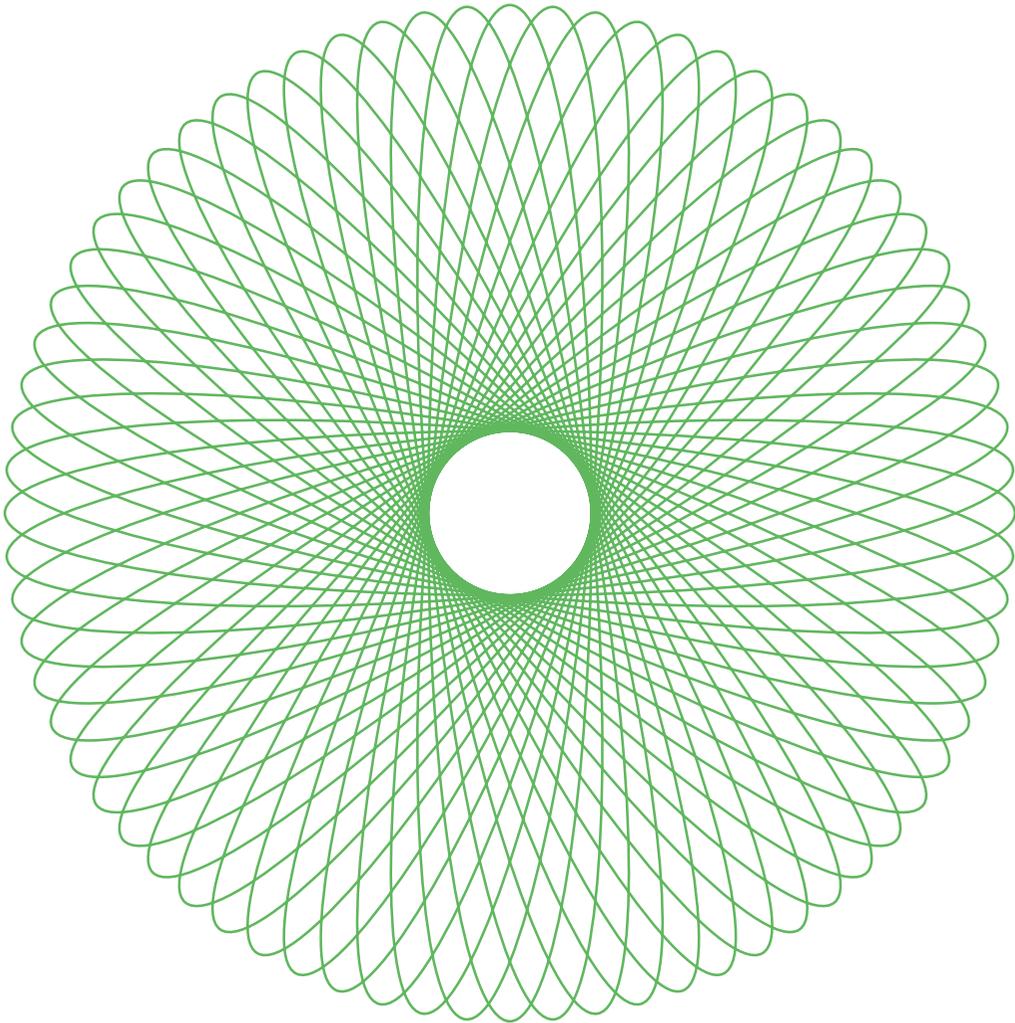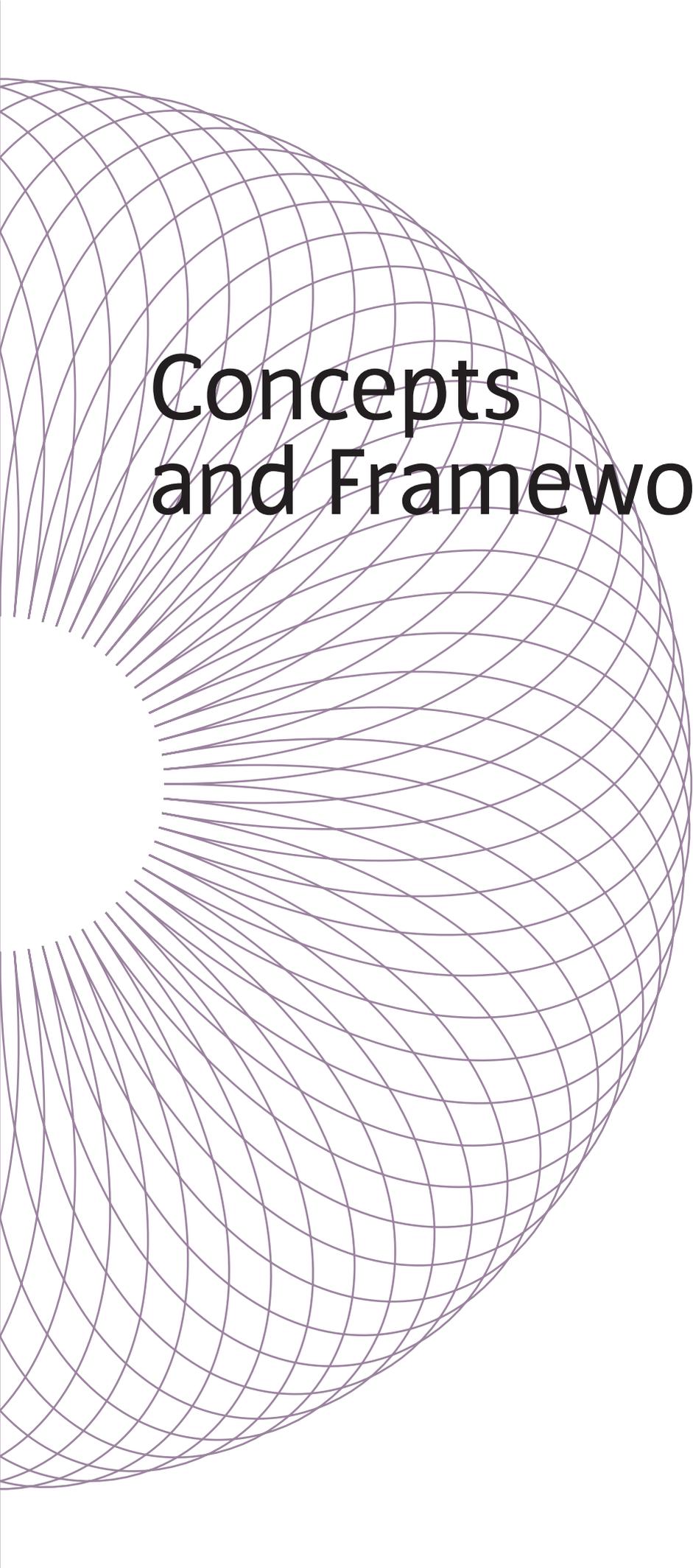
# Concepts
and Frameworks

# Open Government as a Strategic Tool for Public Procurement

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ABSTRACT

This article addresses the movement towards Open Government,[1] and in particular how it requires not only the wide availability of government information for the public, but also for those *within* the government in charge of making decisions in the procurement of public goods. Contrary to what is generally assumed, the lack of relevant and timely government data (about corporations' previous contracts, their current contracts with government institutions, etc.) and the appropriate tools, such as databases and applications, to process this information and use it to inform their decisions is a problem that affects procurement officials as much as it does the wider public, thus generating serious concerns about procurement processes. As part of Open Government, procurement offices are increasingly dedicating more attention to developing datasets, and to finding ways to make them useful for every day decision-making. In that sense, it is clear that Open Government can help equip procurement officials to better make decisions and to monitor the integrity of the implementation of procurement policies in key areas such as health, education and infrastructure. New datasets and tools can shed light on patterns, behaviors and possibilities that previously remained unnoticed, whether because the data did not exist or because it would have taken "an army" of government employees to process, which unavoidably impacts the work and decisions of procurement officials. As more countries draft and implement their Open Government policies, it is essential that they allow spaces for procurement officials to participate in the proposal and development of new tools for using data.

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1   For this paper, the working definition of "open government" offered by Nathaniel Heller, Global Integrity Executive Director will be used. "At its core, 'open government' means: 1. Information Transparency: that the public understands the workings of their government; 2. Public engagement: that the public can influence the workings of their government by engaging in governmental policy processes and service delivery programs; and 3. Accountability: that the public can hold the government to account for its policy and service delivery performance... None of these initiatives or interventions in and of themselves constitute "open government" alone. Rather, only when combined with the others do we truly see the potential for "open government" in its most powerful and holistic form (http://globalintegrity.org/blog/working-definition-opengov).

**P**ublic procurement is one of the most vulnerable areas to corruption due to the large sums of money involved, the bureaucracy in all stages of the process, and the margin of discretionary action that no regulation or technical requirement can completely eliminate, among other factors. In this context, the difficulty to ensure that decisions are made exclusively in the public interest is a threat to the successful implementation of government policies across the board. This ranges from guaranteeing the population's access to health and education services, to achieving infrastructure goals essential for a country's development.

In this context, transparency and civil society monitoring of government procurement activity are recognized as highly cost-effective measures to enhance accountability and, therefore, effectiveness, with a variety of cases showing that more accountability can substantially reduce the cost of public contracts and increase the number of bidders.[2] Civic oversight helps identify inefficiencies, thus decreasing the waste of public funds and increasing procurement efficiency and effectiveness, towards improved service delivery and ultimately for the benefit of citizens.[3] The Organisation for Economic Co-operation and Development's (OECD) Principles for Integrity in Public Pro-

curement[4] and the United Nations Development Programme's (UNDP) Public Procurement Capacity Development Guide[5] consider the engagement of civic actors as a critical factor in the monitoring of procurement processes.

With the explosion of information and communication technologies (ICTs), countries are increasingly disclosing information about procurement processes, both about the pre-tender and tender stages of the decision-making process. This is done through institutional websites and increasingly in portals that allow easy access to information on a country's procurement activity. Such online resources enable comparisons of activity across institutions, sectors and companies that would otherwise require substantial efforts and resources to gather, process and analyze.

In effect, as key procurement information becomes increasingly available - commonly including contracts, project budgets, internal procedures, audit reports, terms of reference, proposal evaluation results, statistics and more - the media, civil society watchdogs, auditing authorities and companies keen to compete, among others, have jumped at the opportunity to use the data, and in doing so, demand accountability, make significant recommendations, and offer more competitive bids, respectively.

Of course, there is still much progress to be made and ideal Open Government, in the area of procurement as much as in any other area of public interest, has yet to be fulfilled in the majority of the world. But, while transparency and civic monitoring are crucial for the effective procurement of public goods, a more basic step in the process should not be overlooked: the responsibility of procurement managers to monitor as they implement their procurement plans. If it is their duty to assess every step of their decision-making to ensure the best

2   H. Feigenblatt, "Buenas Prácticas" in "Monitoreo Ciudadano - Manual de Buenas Prácticas," 2011, Global Integrity y CIPPEC, http://www.lulu.com/shop/global-integrity-y-cippec/monitoreo-ciudadano-en-argentina/paperback/product-17973064.html

3   World Bank, "Civic Engagement in Procurement, A Review of Eight International Case Studies," 2009, http://documents.worldbank.org/curated/en/2009/11/16532592/civic-engagement-procurement-review-eight-international-case-studies

4   OECD, "Principles for Enhancing Integrity in Public Procurement," 2009, http://www.oecd.org/gov/oecdprinciplesforenhancingintegrityinpublicprocurement.htm

5   United Nations Development Programme, "Public Procurement Capacity Development Guide," 2010, http://www.unpcdc.org/home/service/news/global/launch-of-public-procurement-capacity-assessment-guide.aspx

choices are made, whether in the designing of a process or selecting of a contractor, then it is pertinent to ask how can government openness facilitate their work.

The question makes sense when considering the fact that, contrary to what many would assume, a lack of relevant and timely data and the tools to work with it is not a problem that affects only the monitoring public. It also affects government agencies and procurement officials themselves.

## Where's the Data?

Whether for lack of willingness or resources, or even the knowledge to create and organize datasets, governments often lack the same tools and information as the public.

Processing requests for information is often more a problem for government offices because they simply have limited time and tools to organize and process data, rather than necessarily because there is a wish to hide something or a philosophical rejection to openness. As such, it is easy to see why the proactive release of data is even less of a priority. Unfortunately, it is also easy to wonder how governments can possibly be making good decisions without having the minimum information.

Take the example of the price of medicine in the Philippines, one of the few countries in the world that since 2003 explicitly recognizes a role for civil society in the monitoring of public procurement.[6] The country has a large pharmaceutical industry, but over the years prices have become considerably high in comparison to other countries in the region and of similar economic development. Despite legal reforms, little progress had been made in the reduction of prices when, in 2008, the World Health Organization (WHO) and Health Action International (HAI) commissioned a study to assess the efficiency of public procurement at various levels of the country's health system.[7]

The WHO and HAI collected data between December 2008 and February 2009 on the procurement of a set of 50 medicines by national and local hospitals in six regions and by the pharmaceutical subsidiary of the government-owned Philippines International Trading Corporation (PITC Pharma).[8] Because there was no standard data source available, each facility was asked to provide the latest procurement prices as of 2008 (and in some cases from 2007, if there had been no procurement in 2008), for the medicines included in the survey. This was then recorded on a standard data collection form. Various sources were used depending on what was available on each facility, from notices of the award of bids and price lists (printed or digital) to delivery notes from distributors.

The prices paid by these facilities for each medicine were compared to international reference prices. The results revealed severe shortcomings in the procurement practices of many of the procuring institutions. For example, some medicines were being procured on average at 13 to as much as 40 times the international price.[9]

> *Processing requests for information is often more a problem for government offices because they simply have limited time and tools to organize and process data*

There were also cases of extreme variability in the public procurement of the same item within the same hospital from one procurement cycle to the next, and even within the same year, unrelated to volume. Though PITC Pharma was often able to procure low-priced, generic, essential medicines at levels similar to the international reference prices, and was of-

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6   D. Ball and K. Tisocki, "Public Procurement Prices of Medicines in the Philippines," 2009, Health Action International Global, http://www.haiweb.org/medicineprices/surveys.php

7   Ibid.

8   Ibid.

9   Ibid.

ten able to import original brands cheaper than locally available original brands products (in some cases cheaper than the publicly procured generic equivalents), most other procurement entities were procuring medicines at much higher levels.

The difference in price originated from a number of factors. In some cases, procurement officials seemed to interpret the country's procurement laws and regulations in different ways. For example, some officials interpreted the laws as allowing them to negotiate with suppliers after the bidding processes had been completed, while others interpreted that the laws did not allow that practice. Similar examples were found about consignment contracts being preferentially offered to non-winning bidders, and original brands unnecessarily being procured to meet perceived needs of patients. In other cases, the laws were not followed, or there were credible stories of corruption in bidding.

> *Open Government demands for more information, to improve not only the availability of government information for the public, but also for those within the government making decisions big and small*

The obvious question one would ask is if the procurement officials of these facilities compared, at a minimum, the prices offered to them with those obtained by other facilities for the same medicines, in many cases by the same bidders. After all, prices are a significant barrier for access to essential medicines among the poor in the Philippines and, therefore, to the accomplishment of wider health goals and policies.

In the day-to-day world of procurement, the reality is that often there is no magic database making all the answers available to procurement officials. The situation tends to look more

like what Jonathan Wong, a procurement officer in the United Kingdom, describes in a blog post on the Department for Business and Innovations and Skills (BIS) website about how open data can influence procurement culture: "If a public sector organization in Hull managed to negotiate a better deal than an organization in London, surely we, the public sector, should be in a position where that deal can benefit the majority? However, as this information is not openly available, the benefits may never be realized. Let's say this information was available, surely it would take an army of staff to make any sense of it."[10]

This is where Open Government demands for more datasets about the procurement of public goods, released in a timelier manner, have infinite potential. As we know, the availability of more information enables civil society to exercise a stronger monitoring role and, therefore, generate more accountability. But an additional result of Open Government is that, by having to prepare and maintain datasets and determine how to provide them in usable ways, procurement officials are slowly but surely acquiring more adequate tools and information to make better decisions. Throughout the process, they also have to use their own creativity to search for new ways to link datasets and use the information, following thinking processes that are not too dissimilar from those of the media and civil society watchdogs.

The movement towards Open Government and the increasing access to information technologies create real opportunities for procurement officials to take a more informed, critical approach to their day-to-day public spending decisions.

## "Procurement Utopia"

As the Open Government movement inspires more countries around the world to dedicate resources to the proactive release of data, more and more procurement offices find them-

10   J. Wong, "Can Open Data Change Public Sector Procurement Culture?", Public Sector Innovation Blog, Department for Business Innovation and Skills, 27 January 2011, http://blogs.bis.gov.uk/publicsectorinnovation/2011/01/27/can-open-data-change-public-sector-procurement-culture/

selves taking stock of the information they own - which may be as disperse and unstandardized as it was in the 2008 Philippines case mentioned above - organizing it in useful ways, and finding the right tools and platforms to disseminate it.[11] They also find themselves collecting information they did not necessarily pay much attention to before and discovering new ways of using information available to them, such as linking certain datasets and sorting them in different ways, or even using innovative tools that others - outside of the government - have created with their data.

Continuing with Wong's experience as an example, his office thought of linking two datasets: companies' house data, which contains information such as a company's geographic location and type of service provided, and government expenditure data. He describes in another blog post: "As a public sector procurer, I would be able to search for companies by service, filter down to those in my area and find out which other public bodies were using them, what service or product they provided and how much they spent. In this "procurement utopia," I could simply drop an email to my fellow public servant in department xyz and ask about the supplier.[12] How were they? What rate did they charge? Who exactly led the project? This hypothetical situation could regulate pricing across government and ensure best value," he writes in a separate blog post.[13]

According to Wong, the director of an SME (Small and Medium Enterprise) could use this

> *Databases can shed light on patterns, behaviors and possibilities that previously remained unnoticed - whether because the data did not exist and/or would have taken "an army of staff" to analyze*

data to get information on competitors by filtering by organizations providing a similar service and seeing who they are supplying. The SME could also research new customers by looking at the profile of its current customer base and searching for similar companies to approach for collaboration opportunities. "Some useful stuff from quite crude datasets. In theory, providing industry with the tools to develop their business should increase competition and hopefully innovation, while putting the public sector in a strong position to negotiate on price," he concludes.

What Wong calls a "procurement utopia" can be a powerful solution for a procurement manager in London – or in a regional hospital in the Philippines - and it is not far from what the media and civil society watchdogs have long asked for, or in many cases they have built. In other words, Open Government demands for more information, to improve not only the availability of government information for the public, but also for those within the government making decisions big and small.

Databases that facilitate the search for government information like the one described above by Wong, e-Procurement platforms, and many other tools[14] can shed light on patterns, behaviors and possibilities that previously remained unnoticed - whether because the data did not exist and/or would have taken "an army of staff" to analyze. This unavoidably impacts the work and decisions of procurement officials. More importantly, data can facilitate their job by

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11    There are several examples, among them the Office of Procurement of NASA (http://www.nasa.gov/open/plan/procurement.html), Canada's public Works and Government Services Canada, and Singapore's Ministry of Finance's set of procurement guidelines (http://siteresources.worldbank.org/INTECACOSUPROC/Resources/776023-1271709540888/Singapore-Govt-Proc-Regime.pdf). (https://buyandsell.gc.ca/procurement-open-data-on-pre-qualified-suppliers-now-available).

12    Technically, sending an email to a colleague wouldn't be completely necessary, if the data answering these questions (performance reviews, associated staff, record of potential incidents, etc.) is also included in the datasets.

13    J. Wong,  "The Power of Linked Data," Public Sector Innovation Blog, Department for Business Innovation and Skills, 28 January 2011, http://blogs.bis.gov.uk/publicsectorinnovation/2011/01/28/the-power-of-linked-data/

14    J. Warnes, "Combating corruption in the EU through e-Procurement," Transparency International, 16 February 2011, http://blog.transparency.org/2011/02/16/combating-corruption-in-the-eu-through-e-procurement/

clearly showing the weakest areas (for example, the concentration of procurement of certain medicines from a small group of providers) and ways to correct them (for example, how the procurement process followed in a specific instance differed from those followed by an institution that obtained much lower prices).

In the face of visibly suspicious bidding patterns by a company or group of companies or dramatic price differences, among many potential undesired situations, procurement officials find themselves in a position of having to respond. Their response can come in various forms, such as consolidating purchases or correcting the design of bidding processes.

> *Ultimately, the availability of more data and tools increases the possibility of revealing potential corruption and serves as a deterrent to opportunist behavior*

Monitoring in this field can be quite hard for civil society because it requires resources and technical knowledge - legal, financial or technical, depending on what is being procured. However, civil society monitoring can be increasingly enhanced by datasets and tools, and active scrutiny on their part can serve as a valuable complement to regular monitoring by audit authorities and the wider public.

Ultimately, the availability of more data and tools increases the possibility of revealing potential corruption and serves as a deterrent to opportunist behavior. In that sense, the potential of Open Government - understood not only as data availability but first and foremost as an accountability exercise in the procurement of public goods and the implementation of policies associated with them - may be the most significant development in public procurement in the last few decades.

Evidently, there is the question of whether the existence of data and the tools per se is enough to generate significant change. In the same way that laws for transparency and access to information by themselves do not necessarily guarantee more accountability and/or less corruption, the availability of data itself does not mean that procurement officials will utilize it.

One could argue that if there is political will, in the absence of data procurement managers can pick up the phone and ask their colleagues, or even the bidders themselves, to provide information on prices offered to other government agencies. However, datasets processed with the appropriate means to sort, filter and search for patterns, coupled with the technical knowledge necessary to identify what sometimes can be quite sophisticated schemes, brings things to a different level. Informal or *ad hoc* communication does not compare to systematized sets of information in the same way that traveling by bike cannot compete with flying.

The existence of datasets and the right tools bolsters the work of auditing authorities, enables an environment where whistle-blowing can thrive, and levels the playing field for companies to compete. For media, civil society watchdogs, and the wider public, it means having more of the ammunition they need to constantly push for a more transparent and cost efficient procurement of public goods.

Many countries are only starting to draft and implement their Open Government policies and guidelines for public offices, and it will be a long time before openness becomes truly integrated into government day-to-day activity.[15] To ensure that this potential does not get lost along the way, it is absolutely essential to provide procurement officials with the necessary resources and training, and incentivize their participation in the creation of innovative ways of handling data.

15   Open Government Partnership, "Country Commitments," 2012, http://www.opengovpartnership.org/category/challenge/public-resources/procurement-process

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# Towards Post-Governance:

# Information and Communication Technologies Re-shaping Public Administration Transparency in the 21st Century

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ABSTRACT

A new paradigm for public administration emerged at the outset of the 21st Century, characterized by innovative use of information and communication technologies (ICTs) for enhancing transparency and service delivery by governments. In this article the author argues that this new paradigm - "post-governance" - is not necessarily dependent on heavy capital investments or on high-tech capacity development. On the contrary, it is the very existence of old institutional barriers, outdated work flows and a "silo mentality," i.e., different institutions within the same government operating in isolation from each other - that prevent the full-blown modernization, simplification and transparency of the State. Innovative ICT tools, including the unprecedented mass use of social media by civil society, have inaugurated this new paradigm through enhanced modalities of integrated social interaction. In this article the author briefly analyzes the latest trends in the use of ICTs for enhancing transparent service delivery by governments, with emphasis on e-Government and e-Governance, Social Accountability, e-Procurement and Open Government. The conclusion outlines a concrete path to be considered when utilizing ICTs not as an end in themselves, but as a means of improving citizens' satisfaction, service delivery and overall trust in government.

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1   The opinions expressed in this article are those of the author, based on UN publications and other references. The article does not imply the expression of any opinion whatsoever on the part of the United Nations Secretariat or its Member States. Mention of the name of any company, organization, product or website does not imply endorsement on the part of the United Nations.

**T**he main purpose of this article[2] is to outline key global trends in government, including enhanced public participation, transparency and social responsibility for public service in the new millennium. This article argues that these trends are shaping a new operational definition of public governance -, which could be referred to as "post-governance" - characterized by:

• New forms of interaction among social actors motivated by the widespread use of information and communication technology (ICT) within governments, between governments and people, and between governments and businesses.

• The intensification of spontaneous social media use for public governance purposes; new indicators for connected and integrated whole-of-government policies, freedom of information, public use of cloud computing and an overall interest in open government possibilities.

• Increased engagement of civil society, including new modalities of on-line and off-line social and participatory accountability, demand for more transparency in government and public participation.

Public governance has traditionally been seen as the crucial interplay between three separate domains: public sector, private sector and civil society. However, based on these three elements, these domains are increasingly developing planned or spontaneous forms of even closer interaction, which are gradually shaping a new paradigm for public governance in the new millennium. The potential of this new paradigm seems to be inadvertently or deliberately dismissed by various sectors within governments through the use of negative "development myths," including the following: "e-Government is mainly about high-technology;" "our country does not have the financial resources to invest in high-tech approaches;" "ICT is just a temporary fad that will have no real impact in the transformation of the State;" "our civil servants do not have the interest or the capacity to become experts in technology," "information is power, so nobody will share it in our country," etc.[3]

In summary, there is a shift in the conventional governance paradigm, as characterized above, to transform public administration, by-passing the prejudice that this transformation would require civil servants to become experts in technology or that it would require unusually expensive high-tech investments. This approach is not just theoretical, abstract and speculative. On the contrary, the most advanced examples of public service at the global level have provided lessons learned about these trends, which will be briefly described and analyzed in this article.

Within this context, I will further elaborate on three characteristics that can play an increasing role in public governance at the outset of the 21st Century: (1) the increased use of ICT

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2   This article has been adapted from the keynote inaugural presentation made by the author at the Central American Public Service Forum held in Panama from 7 to 9 July 2012, organized by the Government of Panama and the Central America Institute for Public Administration (ICAP).

3   These are generic comments heard from public officials from various developing countries during UN technical missions and meetings.

tools for e-Government and e-Governance,[4] including e-Procurement; (2) the development of new modalities of social accountability, (3) Open Government, freedom of information, and data protection. It is important to note that e-Government tends to refer to internal government operations (back-office: how institutions are coordinated), while e-Governance tends to refer to the relationship between government, private sector and civil society (front-office: how the government presents itself to serve the public).

## E-Government and a "post-governance" approach to modernize and simplify government operations: towards "whole-of-government" approaches

The United Nations e-Government Survey, now in its 7th edition, was first published in 2002.[5] The survey presents a systematic evaluation of the use of ICT to transform and reform the public sector, improve efficiency, effectiveness, transparency, accountability, access to public services and enhance citizen participation in 193 UN member states. It has been used by UN member states as a useful tool to compare e-Government development in all countries through common indicators and policy approaches. The e-Government Development Index is a composite indicator that measures the willingness and ability of public administration to use ICT to deliver public services. It is formed of three basic components:

**OSI =** Online Service Index, with information from the United Nations Department of Economic and Social Affairs (UNDESA)
**TII =** Telecommunication Infrastructure Index, with information from the Information International Telecommunication Union (ITU)
**HCI =** Human Capital Index, with information from the United Nations Educational, Scientific and Cultural Organization (UNESCO) and United Nations Development Programme (UNDP)

By combining these three dimensions, the survey allows governments to map their status in terms of e-Government preparedness and provides concrete indicators to guide policy development. The Online Service Index allows the establishment of various objective phases in the process of national e-Government development, as follows:

**Emerging:** an official website with static government information, including Ministries, information about services and activities, priorities, etc.
**Enhanced:** existence of online services, obtaining downloadable forms, updated policy information, etc.
**Transactional:** possibility of payment of taxes and other payments online, consultations, two-way communications between government and the public, etc.
**Connected:** integrating the internal bureaucracy (back-office integration) for improvement of the "front-office" (overall relationship with the public).

The TII is determined by a composite index of the following, obtained from the ITU, an independent UN agency: (1) Estimated Internet Users/100 people; (2) Fixed Phone Lines/100 people; (3) Mobile Subscribers/100 people; (4) Fixed Internet Subscriptions/100 people; (5) Fixed Broadband /100 people. Each indicator is assigned a one fifth weighting of the total outcome.

The Human Capital Index is determined by a number of indexes composed of the following and obtained from UNESCO and the UNDP: (1) adult literacy rates; (2) combined primary, sec-

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4    E-Government refers to the utilization of ICTs tools to improve efficiency, transparency, accountability and inclusion of government. It refers mostly to government operations. Governance refers mostly to linkages between the public sector, private institutions and civil society groups. It is both a set of values and a tool. As a set of values, good governance can reinforce universal parameters contributing to the implementation of internationally agreed development goals. As a tool, governance requires adaptation to each national context and each region in order to serve specific development objectives, in line with local priorities. It also implies participation (e-participation) at three levels: 1) information, 2) consultation and 3) decision-making. The utilization of ICTs can accelerate and enhance governance; referred to here as E-Governance.

5    Source: UN e-Government Survey 2012 at www.unpan.org

ondary and tertiary gross enrolment ratio. The adult literacy rate is assigned two thirds of the total weighting, while the gross enrolment ratio is assigned one third.

The UN e-Government survey showed the following results for the global e-Government Development Index: 1) Republic of Korea (0.9283); 2) Netherlands (0.9125); 3) UK (0.8960); 4) Denmark (0.8889); 5) US (0.8687); etc. All indexes are represented by a statistical mean between 0 and 1, with 1 being the highest score.

> { *Ninety eight percent of governments are offering their services online, including through transactional and connected modalities* }

However, more important that the actual ranking is the fact that governments now have a means to guide and gauge their e-Government policies through concrete indicators. Of all 193 UN countries, only three do not have an official online presence.[6] Ninety eight percent of governments are offering their services online, including through transactional and connected modalities. Here I am not only referring to the way in which Korea, the Netherlands or the US present themselves online to their citizens. Colombia also employs online forums, blogs and online polls; social networking tools such as Twitter, Facebook, Wordpress and You Tube are used for citizens to express their views. Malaysia has a "no wrong door" government policy, meaning that their official website attempts to offer a variety of public services in an integrated multi-channel way. Mauritius offers an A-Z thematic index to facilitate citizens' access to services in an integrated manner, while

Mexico and Costa Rica developed a "national Google" search engine so that users can filter information more easily. This was combined with a "guillotine" approach to eradicate inefficient public services as elected by the public. In summary, the public is becoming used to having access and receiving services from their governments 24 hours a day, seven days a week, without necessarily knowing which institutions are providing the service. The bureaucracy redesigns itself internally, so that citizens may receive a one-stop service. This is whole-of-government, i.e. governmental institutions make an effort to integrate their work and outputs to serve citizens better, instead of working in isolation from each other.

The main conclusions of the UN e-Government Survey 2012 highlight the following trends: 1) whole-of-government approaches are leading the way in the most develop countries in e-Government development countries; 2) UN member states are paying closer attention to multi-channel service delivery; 3) developing countries are making progress in e-Participation; and 4) citizens are demanding more services from governments. This means that governments are gradually becoming facilitators of integrated single entry-point demand-driven services, instead of supply-driven providers through uncoordinated channels.

## E-Procurement

E-Procurement has proven itself as one of the more effective and efficient tools for bringing good governance to the procurement process in many countries. E-Procurement initiatives have received significant support from the donor community including: the World Bank, the Asian Development Bank, the Inter-American Development Bank and the African Development Bank. Various initiatives have already taken place, spearheaded by different organizations to define best practices and strategies for the implementation and development of e-Procurement systems, and many countries have already introduced e-Procurement into their business practices through various business models and approaches. For instance, the

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6   Central African Republic, Guinea and Lybia, UN. e-Government Survey 2012.

Philippines claims to have saved more than US$1m every month on newspaper advertising costs alone. The PhilGEPS system supports more than 8,000 agencies and 50,000 suppliers. Costa Rica claims to have saved more than 2% of GDP with their Mer-Link e-Procurement System. Korea claims that their system KONEPS supports over 41,000 agencies and handles over US$5bn in annual procurement activities. In Chile, the ChileCompra system is said to have doubled the participation of small and medium enterprises in the market, while in Mexico the Compranet system claims to have

saved between 20% and 25% in public purchases costs. One important aspect to note is that there is no universal system applicable to all situations; adaptability to local realities is a crucial process.

There are various myths and realities surrounding the concept of e-Procurement,[7] which are clarified in the table below.

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7    Adapted from an Expert Group Meeting on e-Procurement organized by UNDESA in New York, October 2011, http://www.unpan.org

| MYTHS | REALITY |
|---|---|
| **e-Procurement is primarily an ICT project** | **e-Procurement  is primarily a procurement project**<br><br>→ The project should be led by the organization in charge of government procurement rather than IT authorities or IT vendors.<br>→ A common understanding of the roles and the balance of procurement professionals and IT professionals is important. |
| **e-Procurement is a digital replication of traditional procurement** | **e-Procurement is an overall procurement reform agenda**<br><br>→ Conversion to e-Government procurement requires the reengineering of the overall procurement process in order to be successful.<br>→ It is not an automation of the traditional paper-based process. |
| **e-Procurement will eradicate corruption** | **e-Procurement may significantly increase transparency**<br><br>→ It can provide traceability for audits, facilitate data analysis for detecting corruption, and enhance transparency through e-Disclosure of bidding results.<br>→ If implemented improperly, it may leave room for new forms of corruption and abuses including illicit access to bidding data and data manipulation. |
| **The introduction of e-Procurement requires heavy legislation** | **e-Procurement does not require heavy prescriptive legislation**<br><br>→ Initiating e-Government procurement may not require legislation.<br>→ Light legal framework can be used together with complementary regulations and guidelines. |
| **Single window e-Procurement  portal requires centralized procurement system** | **Single window e-Procurement portal can be adopted in countries with decentralized procurement systems**<br><br>→ Single window e-Procurement portal only requires a system operating entity.<br>→ Individual contracting agencies may commonly use the single window portal, while individually conducting biddings. |

E-Procurement is not just about placing an "e" in front of out-dated procurement practices; it is predominantly a governance exercise, which should go beyond ICT technical aspects. There are distinct strategies, approaches, standards and references for each one of the basic phases of an e-Procurement process: pre-award, award and post-award. Implementing e-Procurement in developing and less developed countries may require the need to consider hybrid approaches, combining on-line and off-line methods. The bottom line is that the conditions for implementing e-Procurement are related more to governance and capacity development, including the ability to streamline workflows, than to the availability of technology. Naturally, it would be a mistake to invest massively on infrastructure for e-Procurement if there is no existing capacity to handle the various phases of the purchasing process; it is also important to count on political will towards transparent approaches and towards engaging the supplier community and civil society.

In conclusion, on the one hand e-Procurement is not a panacea that will automatically cure all ills associated with corruption and lack of transparency. At the same time, when implemented correctly it does have the potential to significantly improve accountability and transparency in public administration while reinforcing the potential of public-private partnerships.

## Public Participation and Social Methodologies for Enhanced Accountability

There are various dimensions and modalities for public accountability. "Vertical accountability" is usually perceived as being internal to governments and defined by a traditional chain of administrative relationships linking the electorate, various levels of a government's hierarchy and service delivery. "Horizontal accountability" can refer to linkages between two institutions at the same hierarchical level in government, but mostly to the act of engaging the public in accountability exercises. These can have two basic purposes: (1) answerability, or the obligation of public officials to inform the public about their activities and justify their choices; and (2) enforcement, or the authority to impose sanctions on those public officials and institutions that have gone beyond their mandates and limits.[8]

Part of the movement towards growing social accountability is motivated by the realization that elections are a very basic process to assess how democratic public governance is performing. Elections, on average, happen every four years and the public are usually given a choice between a "situation" candidate and an "opposition" candidate. The "situation" candidate usually tries to convince voters that absolutely everything is going well, while the "opposition" candidate tries to convince voters that the current "situation" government is doing a terrible job. Quite often, personal attacks become part of this game, which can result in the public losing interest in the political process. No government in the world can do everything right or everything wrong at the same time. When a government acknowledges areas for improvement in its own nuanced performance, it is contributing to one of the most important points in building overall trust in government.

In the most advanced democracies social accountability is therefore becoming a 24/7 intrinsic part of government, including demand-driven or supply-driven social accountability methodologies, such as: social audits; budget analysis initiatives, surveys to monitor public expenditures; multi-channel mechanisms for complaints and Ombudsman modalities; participatory planning and participatory budgeting exercises.

In summary, there are plenty of cases in various regions around the world indicating a trend towards the utilization of social audit tools and enhanced participation responding to societal need for increased transparency.

8    Source: Expert Group Meeting "Engaging Citizens to Enhance Public Service Delivery and Strengthen Accountability: Accelerating Progress toward the Millennium Development Goals," organized by the Division for Public Administration and Development Management (DPADM) of UNDESA in Vienna, Austria, 11-13 July 2011, http://www.unpan.org/2011WKS-CE-Vienna

However, it is important to separate individual cases, achievements, lessons and policies from politically motivated barriers, circumstantial aspects and specific technical approaches. It is not difficult to elaborate politically correct platitudes about "transparency," but it is a major challenge to systematize a sensible balance between dialogue and conflict among social actors within a cohesive public administration framework.

## Open Government Data: balancing freedom of information with data protection

With advancements being made in ICTs, citizens expect better organization of government data through knowledge management and a growing segment of the public requires data to be readily available on online platforms. Governments that are aware and responding to this demand are opening up their data sets, usually via Open Government Data portals, using open formats such as CSV, XML among others, which allow citizens to perform their own analyses.[9] Open Government Data usually requires machine readable software and not all governments are ready or willing to share all their information online, due to understandable political, security and privacy issues.

It is important to clarify that the expression "Open Government" has been used recently in two different ways: (a) to imply a more generic willingness on the part of a government to become more transparent by sharing information; or (b) to imply a specific technological platform allowing information sharing through machine readable software and networked computers, in line with specific criteria.

The coming years and decades are likely to witness a gradual balance between freedom of information and data protection within public policies. Therefore, I anticipate that in the future, government leaders will receive a political

mandate together with a pen drive containing different data sets that ought to be protected or made public.

Open Government Data strengthens participatory governance, which allows citizens to monitor data streams and thereby monitor government performance in terms of transparency and corruption. It may also allow citizens to be aware of important issues and to be part of the decision-making process to address policy issues through e-Participation.

> *One important aspect to note is that there is no universal system applicable to all situations; adaptability to local realities is a crucial process*

## Freedom of Information Acts

Globally, l91 countries (47 percent) have a Freedom of Information Act (FOIA), 50 countries (26 percent) have no FOIA, 28 countries (15 percent) have a draft law and 24 (12 percent) countries have a constitutional provision only, which shows a very heterogeneous and transitional global scenario concerning overall freedom of information legislation.[10]

## Data Protection Acts

On the other hand, 92 countries (48 percent) have no Data Protection Act (DPA) legislation, 82 countries (42 percent) have DPA legislation, 11 countries (six percent) have a constitutional provision and eight countries (four percent) have a draft legislation currently being discussed. This also shows a very heterogeneous global scenario concerning DPAs.

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9    Source: United Nations Public Administration Network (UNPAN), under United Nations Public Administration Case Studies (UNPACS) portal, prepared by the Division for Public Administration and Development Management, UNDESA.

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10   Open Government Data (DPADM / UNDESA) www.unpan.org

One interesting aspect is that countries often embark on "freedom of information" exercises and "data protection" exercises without coordinating each initiative with the other. Different types of social actors also support one or the other. The media is perhaps the most vocal actor supporting freedom of information, particularly in Europe, while the security and intelligence community together with NGOs advocating the privacy of citizens are keen to support DPAs. Ultimately, common sense and national interests will determine which data sets should be under the purview of freedom of information or under the purview of data protection.

{ *States are shifting from separate single-purpose organization models to integrated and unified whole-of-government models* }

A series of tools can be used to implement and manage Open Government Data policies, such as: Open Government Data catalogues, Open Government Data toolkit,[11] Open Government Data competitions and applications, Open Government Data index (comprised of international treaties commitments / international rule of law, data accessibility, usability and dissemination efforts and technical standards, e.g. W3C 5-points rating[12] /ISO standards, freedom of information and data protection legislations, etc.)

Due to European Union policies, European countries are ahead of the curve in promoting

legislation related to data privacy and protection. Effective privacy legislation is necessary for successful Open Government initiatives, so that concerns from politicians, public administrators and citizens are taken into account. A strong institutional framework is also necessary for access to government data and data privacy.

However, the global lack of institutional frameworks to facilitate the implementation and oversight of freedom of information and data privacy in various countries make it difficult for Open Government to become an immediate reality. Nevertheless, the vast majority of European countries facilitate the existence of an independent freedom of information and a data privacy body.

## Conclusions

This article hopes to have demonstrated current trends in government, showing a gradual movement towards enhanced transparency and participation. This movement includes, but is not limited to: e-Government and e-Governance; integrated whole-of-Government approaches; multi-channel service delivery; e-Procurement possibilities; enhanced social accountability mechanisms; balance between freedom of information and data protection for privacy and security reasons, among other aspects.

This conclusion points towards pertinent "post-governance" trends, which may characterize a shift in the traditionally static and separate set of relationships between state, citizens and the private sector.

States are shifting from separate single-purpose organization models to integrated and unified whole-of-government models. States are moving to centralizing entry points of service delivery to a single portal where citizens can access all government-supplied services, regardless of which government authority provides them. In some developed countries, a whole-of-government approach helps build a transparent government system with interconnected departments and divisions.

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11   DPADM / UNDESA is in the process of developing the OGD Toolkit that is an entry point for those UN Member States who plan to share data with their constituents.

12   The World Wide Web Consortium (W3C) is an international community that develops open standards to ensure the long-term growth of the Web. They have developed criteria for advancing open government based on 5 points. For more, go to http://www.w3.org/

Together with methodologies for social accountability and legal frameworks for open government, we seem to be embarking on a new paradigm for public governance - "post-governance" - in which former organizational divides tend to evaporate in the face of a more demanding citizenry with the power to topple dictatorships at the touch of a button, counting on remarkably revolutionary approaches afforded by technology and new formats of social organization.

The movement from traditional governance to post-governance does not need to be erratic and circumstantial. There are concrete indicators available guiding the path from emerging, enhanced, transactional and connected online presence on the part of governments and there are the tools available to measure progress. There are concrete methods to promote social accountability, e-Procurement and freedom of information. The challenges lie in attaining leadership, capacity development and the opportunity to integrate the way in which public administration frameworks operate.  Alternatively, as seen in recent history, lack of transparency or ignored opportunities for enhancing transparency may result in popular rejection or bad election results, reflecting a lack of trust in government.

At the very least, we may witness a new phase for public administration design characterized by innovative and integrated service delivery. At the very best, we may be entering an era in which authoritarian and non-transparent government, within reasonable limits, might be considered a thing of the past.

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# Participatory Democracy: Can Citizens Take Over Policy Making from the Executive?

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A B S T R A C T

The Open Government Partnership (OGP) has been hailed as the initiative that will bring about a major shift in participatory democracy, due to its focus on empowering citizens and harnessing the powers of new technologies in the quest for enhanced transparency, responsiveness, accountability and effectiveness of governments. This article looks into prospects for such a shift by researching novel initiatives sitting at the intersection of Information and Communication Technologies (ICTs) for development, citizens' engagement in policy making and Open Data. The article will explore whether efforts by governments thus far to provide avenues for electronic petitioning have contributed to participatory democracy; whether the focus on ICTs is in fact limiting access to policy making, thus marginalizing the poor and vulnerable; whether Open Data sparks citizens' interest for further use and innovation; and whether OGP-related efforts for strengthened governance fuel improved service delivery. The article attempts to shed more light on the contribution of the OGP and Open Data movements to civil society's participation in policy making and monitoring public sector performance. It will also attempt to uncover the drawbacks of the Open Data movement that should be resolved if governments wish to stay on course and deepen their interaction with their service users.

## The promise of Open Government Partnership

There is a new kind of optimism brewing, rooted in the fact that the Open Government Partnership (OGP) community has been steadily growing. Heralded by the Obama administration in 2009[1] and co-sponsored by the Government of Brazil, this new multilateral initiative aims at tackling the scourge of corruption, promoting transparency, empowering citizens and harnessing the powers of new technologies to strengthen governance. It has quickly gained momentum: as of January 2013, it boasts 58 participating countries,[2] which have already submitted 45 action plans. In these plans, national governments listed close to 800 commitments,[3] i.e. specific activities designed with the aim of achieving the goals structured around five pillars: increasing public sector integrity, improving public services, more effectively managing public resources, creating safer communities, and increasing corporate accountability. What distinguishes the OGP from existing multilateral initiatives adopted in the attempt to curb corruption, particularly the United Nations Convention against Corruption, which has far more participating countries?

Partnership between government and civil society is one of the key features of the new multilateral initiative. The OGP strives to empower civil society in the quest for enhanced transparency, responsiveness, accountability and effectiveness of governments, as participating governments' commitments should be drafted based on broad national consultations, ensuring representative participation. "Open Government" draws its roots from the struggle for government accountability, recording its first pivotal success in the US with the adoption of legislation on free access to information.[4] While the OGP strives to empower civil society, the Open Data movement, which according to Yu and Robinson[5] first appeared in relation to public availability of scientific data collected by NASA and its international partners, is more focused on the publication of various datasets, collated by governments by way of performing its functions, in machine-readable, unrestricted and raw formats. Such data availability is meant to enable interested, technologically savvy individuals to interpret the data and build applications that ultimately create pressure for improved service delivery. Whereas the conceptual relations between Open Government and Open Data spurred a heated debate[6] as to the likelihood of the governments to sideline genuine transparency by posting politically dull data online, by embracing the fashionable Open Data movement, it can be argued that a pronounced shift in the usage of government-owned data effectively backs the freedom of access to information, and allows for citizens to scrutinize governments' performances. This is how the overarching goal of the OGP is achieved: new technologies provide tools to considerably intensify bidirectional interaction between the governments and their constituencies, ultimately strengthening governments and producing tangible benefits and making people's lives better.

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1  Open Government Directive, the White House, December 8, 2009, http://www.whitehouse.gov/open/documents/open-government-directive. The Directive was preceded by the memorandum on open government, issued by Barack Obama on his first day as President of the US, on January 21, 2009.

2  List of OGP participating countries, http://www.opengovpartnership.org/countries last accessed on January 13, 2013.

3  Global Integrity conducted an initial assessment of OGP national action plans, and categorized all commitments by issues and content. "So What's in Those OGP Action Plans Anyways," Global Integrity, 26 July 2012, http://www.globalintegrity.org/blog/whats-in-OGP-action-plans.

4  H. Yu, D.G. Robinson, "The New Ambiguity of "Open Government,"59 UCLA L. Rev, Disc. 178, 2012.

5  Ibid.

6  Ibid. See also: J. Weinstein, J. Goldstein, "The Benefits of a Big Tent: Opening Up Government in Developing Countries, A Response to Yu and Robinson's *The New Ambiguity of 'Open Government*,'" 60 UCLA L. Rev. Disc. 38, 2012.

According to an initial mapping of all OGP commitments performed by the international NGO Global Integrity, citizen engagement comes as the third most common set of commitments from participating governments, by all means a promising fact. Whether the OGP will deliver on this promise is another question, to be carefully inspected. This article will look into prospects for a demonstrable increase of citizens that take an active part in the political lives of their communities, by analyzing existing initiatives at the intersection of Open Data, ICTs for development and citizens' engagement in policy making, specifically looking at openness as public participation and openness as transparency.

## Openness as public participation:
### citizen engagement

There is not a government in the world, which has not at one point or another, been faced with the problem of disengaged citizens. A plethora of reasons can cause the public to distance itself from the executive, resulting in dissatisfaction or the refusal to accept a policy or measure adopted by the government, as well as a lack of trust in public institutions, reports on perceived or actual corruption, social instability, shrinking social benefits and pension funds, a failing economy, voter apathy, etc. Embracing citizen engagement and participatory processes could help bridge the divide. Consequently, the manner in which a government interacts with its citizens can serve as a reliable indicator of openness, transparency and accountability, as well as the readiness to embrace innovation. James Svara and Janet Denhardt best describe citizen engagement as the "ability and incentive for ordinary people to come together, deliberate, and take action on problems or issues that they themselves have identified as important." [7]

Therefore, such engagement requires involving citizens early on in the policy making

*A pronounced shift in the usage of government-owned data effectively backs the freedom of access to information, and allows for citizens to scrutinize governments' performances*

process, by way of empowering them to identify problems, as well as propose solutions. Several examples have already emerged, illustrating that technology does hold the key to boosting civic participation. European Commissioner for the Digital Agenda, Ms. Neelie Kroes, welcomes sentence-by-sentence comments on her speeches as soon as they are delivered, thus creating a new model of engagement by enabling an open debate and a two-way communication platform.[8] Finland is crowd-sourcing legislative proposals by inviting citizens to provide inputs on the "Open Ministry" platform,[9] and Iceland was the first country ever to crowd-source its constitution.[10] Consequently, it is a fundamental shift from engaging the public for the sake of securing votes, communicating to ensure buy-in and smooth implementation of a new policy, and passing through the hoops of public consultations with an already made up mind, i.e. carved policy proposals, without much intent to incorporate public input.

Citizens' engagement is an instrument to "facilitate the inclusion of individuals or groups in the design of policies via consultative or participatory means to achieve accountability,

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7    Connected Communities: Local Government as Partner in Citizen Engagement and Community Building, A white paper prepared for the Alliance for Innovation, 2010, p.5, http://transformgov.org/en/knowledge_network/documents/kn/document/301763/connected_communities_local_governments_as_a_partner_in_citizen_engagement_and_community_building.

8    Neelie (Kroes) Comment Making Speeches Talk http://commentneelie.eu/

9    Finland is about to start using crowdsourcing to create new laws, GigaOM, http://gigaom.com/2012/09/20/online-crowdsourcing-can-now-help-build-new-laws-in-finland/, 20 September 2012.

10    Mob rule: Iceland crowdsources its next constitution, The Guardian, http://www.guardian.co.uk/world/2011/jun/09/iceland-crowdsourcing-constitution-facebook, 9 June 2011.

transparency and active citizenship."[11] Citizens can get involved either as consumers of services, where their feedback typically serves the purpose of creating pressure for improving the service delivery or can get directly involved in shaping policies and influencing decision-making. Modalities for collaboration in policy-making ranges from: a) informing citizens, b) consulting them, c) working with them to ensure that civil servants understand and relate to issues of public concern, to models for deeper engagement where d) citizens collaborate with the executive to identify issues, discuss solutions and ensure implementation, to the ultimate level of citizen engagement, i.e. e) empowering the citizens to be fully in charge of decision making.[12]

> *The establishment of e-Petition websites increases the number of citizens who take part in policy making, either through submitting a petition or supporting existing petitions*

## Petitioning in digital age democracy

Online petition platforms are a 21st century, technology-powered modality of an age-old avenue for citizens to interact with their local or national governments or parliaments. Several governments taking part in the OGP committed to establishing online petition platforms, in an effort to encourage citizens to directly influence policy making. Such form of e-Participation is in keeping with the OGP aspirations, i.e. employing technology to empower

the citizens and provide them with a tool to demand more transparency and accountability of their governments, voice their concerns or flag issues that the authorities should resolve. E-Petition platforms used as tools to respond to citizens' concerns were singled out among the top ten commitments to Open Government at the OGP Inaugural meeting held in Brasilia in April 2012.[13] There is little academic research on the socio-economic characteristics and motivations of e-Petitioners. Therefore, it is difficult to assess whether e-Participation in decision-making represents a bullet proof solution to disengaged and disinterested communities. Germany, which has not joined the OGP family, was the first to introduce e-Petitions in 2005;[14] a review of trends and practices of e-Petitioning by Lindner and Riehm provides ample opportunities to draw lessons learned and better understand the efforts to create more participatory institutions. The governments of Moldova, Montenegro, Slovakia, Ukraine, the UK and the US are at differing stages of development and implementation of these tools,[15] intended to simplify the process for submitting petitions and passing the hurdle that is a prescribed number of supporting votes for a petition to be debated in the parliament or the government. However, the question remains whether e-Petition platforms can be regarded as a panacea for disengaged communities. Do they have the potential to achieve inclusive and representative participation or to enhance the quality of the legislative process? Whether the creation of such digital platforms will achieve the desired goal, presumably that of address-

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11   J. Rietbergen-McCracken, "Participatory Policy Making", Participatory Governance Exchange, p. 1, http://pg-exchange.org/images/toolkits/PGX_F_ParticipatoryPolicy%20Making.pdf

12   Connected communities, p. 9, above n7.

13   E-Petition platforms as tools to respond to citizens' concerns were singled out amongst the top ten commitments to Open Government at the OGP Inaugural meeting in Brasilia (April 2012). Available at: http://www.opengov-partnership.org/news/revealed-top-ten-commitments-open-government-representatives-73-countries-gather-brasilia

14   R. Lindner and U. Riehm, "Broadening Participation through E-Petitions? Results from an Empirical Study on Petitions to the German Parliament", http://microsites.oii.ox.ac.uk/ipp2010/system/files/IPP2010_Lindner_Riehm_Paper.pdf

15   Please note that the list is non-exhaustive. In addition to online petition platforms set up by the government or the parliament, there are a number of social platforms, designed or maintained by the civil society. Latvian platform manabalss.lv is an excellent example of the latter.

ing and resolving issues of public concern by giving citizens a voice and fulfilling the aspirations of the OGP, will depend on a number of factors.

Another issue to be considered is whether the establishment of e-Petition websites increases the number of citizens who take part in policy making, either through submitting a petition or supporting existing petitions. In Germany, the establishment of this online tool did not lead to a noteworthy transformation in democratic participation and citizen engagement. "In other words, it is the already politically engaged who tend to embrace these sorts of tools, not the disengaged."[16] Such dilemmas permeate the deliberation on the very nature of the OGP: is internet-based democracy ensuring universal participation or is it empowering the already empowered? Some changes were, however, visible when compared to traditional petitions: e-tools were more so used by the younger population, the number of signatories was on the rise, and e-petitioners were predominantly members of political parties and trade associations, usually men of an above-average education level. "Instead of fulfilling the hopes of those who had sought to attract the politically disengaged by offering an on-line channel for petitioning, the results for the most part support the expectations of political sociology's well established standard model of political participation."[17] In the case of the UK, "active participants tend to be white, more affluent, better educated and older than the average citizen."[18] Therefore, it can be argued that e-Petition platforms cater to the needs of politically savvy individuals, thus effectively sidelining the marginalized groups who do not have regular Internet access, such as those liv-

ing in poverty or in remote, rural areas, people with disabilities, minorities, elderly, women, etc. Having said that, the issue of inclusive participation can be resolved either directly by governments introducing other engagement models that are better suited to marginalized groups, or by civil society organizations that may take it upon themselves to act as facilitators for the poor and the vulnerable.

The somewhat romantic belief that the sheer presence of technological avenues for participation in democratic processes will automatically cause an influx of policy propositions by citizens does not pass the reality test. Low attendance rates at public consultation events and low voter turnout in the UK 2012 local elections,[19] among other examples, serve as indications of disinterested citizens, who are more individualistic, less deferential, more demanding, more diverse, more educated, busier, older, more mobile and less engaged. "Are participants becoming an endangered species at the very time that government desperately wants to listen?" asks Edward Andersson, an expert on participatory policy making.[20] Exposure to various financial and private sector services, such as online banking and other commercial e-services, which are highly personalized, suitable for modification by the user to suit his or her individual needs, has raised the expectations of citizens; hence, governments should be able to provide tailored, personalized e-services (e.g. handling various administrative requests or enabling citizens to lodge complaints, seek information or any other assistance from the authorities) as well, if they wish to keep their "customers."[21] It is questionable whether online platforms for petitions meet those criteria, given the fact that they were designed for a generic user, essentially for every citizen of any given country, with little or no possibility to tailor the system to individual user preferences.

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16    Do "e-petitions" change government? Germany's experiment, Ars Technica, April 2011, http://arstechnica.com/business/2011/04/do-e-petitions-change-government-germanys-experiment/

17    R. Lindner and U. Riehm, p. 21, above n14.

18    E. Andersson, "Participants of the future", Zukunft de Öffentlichkeitsbeteiligung Chancen. Grenzen. Herausforderungen, 2011,
http://www.partizipation.at/fileadmin/media_data/Downloads/Zukunftsdiskurse-Studien/zukunft-der-oeffentlichkeits-beteiligung.pdf#page=31

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19    The Guardian, "Why social media will solve the problem of local voter apathy," 20 August 2012, http://www.guardian.co.uk/local-government-network/2012/aug/20/social-media-local-voter-apathy?newsfeed=true&utm_source=buffer&buffer_share=41baf

20    E. Andersson, above n18.

21    Ibid.

Whether e-Petitions provide an additional layer of quality to the policy making cycle should also be investigated. The "We the People" platform, rolled out by the US Government in September 2011 as part of the OGP action plan, does not seem to back that hypothesis. What has been designed as part of the US Government's effort to produce an "unprecedented level of openness in Government"[22] is yielding civic contributions of questionable relevance (e.g. a petition to build the Death Star, a fictional weapon featured in the Star Wars movies, capable of destroying a planet).[23] Though federal government provided responses to some of the e-Petitions, the fact that these are handpicked by the administration led the commentators to claim that the White House is using e-Petitions to advance or promote goals which are already on its political agenda.[24]

## What has been the success of e-Petitions?

Research and statistical data on the use of online petition platforms shed light on the state of play in Germany and the UK; it is likely that similar initiatives in other countries will stumble upon similar hurdles. The UK has witnessed 36,000 petitions during the first year of its e-Petition website's operation,[25] with 64 million signatures.[26] Although the number of petitions and signatures might appear staggering, only ten petitions reached the 100,000-signature threshold, leading to eight petitions being debated before Parliament.[27] In Germany, citizens have been able to file petitions electronically to the Bundestag (Parliament) since 2005. "Overall, from September 2005 to the end of 2010, more than three million signatures were counted for about 2,100 public petitions, and more than 100,000 written contributions to discussions were posted on the forums."[28] However, just nine petitions, effectively representing 0.4 % of all submitted petitions, gathered more than 50,000 electronic signatures within the allotted time of six weeks. Such numbers go to show that the online petition system has not replaced conventional petitioning in Germany, which continues to be used by citizens.[29]

It could be argued that online petitioning is simpler and less time consuming than conventional signature gathering, though it does indeed require a lot of effort. Still, as some commentators note,[30] passing the threshold of required votes and rallying support around an issue is not an easy task for an unaffiliated individual, whereas organized interest groups might choose to rely on other methods for securing backing on issues for which they advocate. Electronic petitioning therefore serves as an avenue for unorganized groups to take on a more active role in decision-making by flagging issues they care about. However, the fact that only a handful of civic petitions made it to a deliberation or response by national authorities signals that civic activism does not even come close to prolific legislating by the state. Provided that the coming years, with ever-increasing youth population and popularity of ICTs, do not bring about a remarkable change in online petition-

22   The Open Government Partnership, National Action Plan for the United States, p.1, September 2011, http://www.opengovpartnership.org/sites/www.opengovpartnership.org/files/country_action_plans/US_National_Action_Plan_Final_2.pdf

23   Official White House Response to Secure resources and funding, and begin construction of a Death Star by 2016, "This Isn't the Petition Response You're Looking For," https://petitions.whitehouse.gov/response/isnt-petition-response-youre-looking

24   "How "We The People," the White House e-Petition Site, Could Help Form a More Perfect Union, TechPresident, 20 November 2012, http://techpresident.com/news/23164/how-we-people-white-house-e-petition-site-could-help-form-more-perfect-union

25   The e-Petition website was launched in August 2011.

26   "E-Petitions get 6.4 million signatures in a year," BBC, 17 August 2012, http://www.bbc.co.uk/news/uk-politics-19266497

27   Ibid.

28   U. Riehm, K. Böhle, R. Lindner, Electronic Petitioning and Modernization of Petitioning Systems in Europe, TAB-Report No. 146, June 2011, http://www.tab-beim-bundestag.de/en/pdf/publications/reports/AB146_Summary.pdf

29   Ibid, p. 11.

30   J. H. Snider, "The White House's We The People Petition Website; First Year Report Card," Post, 23 September, 2012 http://www.huffingtonpost.com/jh-snider/we-the-people-petition_b_1899075.html

ing, these platforms will only serve the purpose of highlighting issues that citizens feel strongly about. It will still be up to the authorities to follow up by addressing these issues. Governments would be welcome to assign staff members "with sifting petitions that secure lower levels of support to ensure that, where appropriate, relevant petitions are, for example, still tagged to debates, that Members of Parliament are made aware of their existence, and petitioners receive some form of feedback."[31]

Having said that, it is clear that the technological solution to the issue of democratic participation by petitioning is just a part of the solution to the problem of low civic participation. Continuous engagement, two-way communication and a mixture of offline and online forums for interaction is at the crux of participatory democracy, and such an approach stands more chance of attracting users, i.e. citizens to the digital platforms.

## Openness as transparency:
### Open Data

The OGP comes hand-in-hand with Open Data in many participating countries. Open Data is an effort to make data accessible to everyone in a machine-processable, raw format that enables analysis and further use. This and e-Governance are the most popular OGP commitments.[32] Willingness of the OGP member countries to make data available to citizens for their scrutiny and re-use is yet another modality for governments to foster citizen engagement, and as such does warrant admiration. It marks a paradigm shift since large quantities of datasets that were not so long ago considered to be exclusive property of the governments are now widely accessible online. National and municipal governments, NGOs and international governmental organizations (e.g. the World Bank, European Commission), have

> *The online petition system has not replaced conventional petitioning in Germany, which continues to be used by citizens*

embraced Open Data portals either in pursuit of greater transparency and accountability, or in the desire to fuel innovation and economic development.[33] However, the question remains whether these datasets can be put to good use, such as for monitoring government performance or making informed choices on the use of public services. Yu and Robinson[34] posit that Open Data has little to do with accountability since even the most opaque government can set up an open data portal, releasing politically insensitive, irrelevant data while maintaining a regime of non-disclosure on the more central issues of government operations, such as salaries and benefits, outcomes of public procurement and public finance management, and information on budget expenditures. Nathaniel Heller of Global Integrity joins the skepticism, cautiously suggesting that emerging democracies might benefit more from transformative public sector reforms along the lines of good governance, particularly around key issues such as political party and election campaign finance, than from investment in snazzy Open Data portals.[35]

Despite the restrained outlook on the usefulness of Open Data portals in the quest for

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31  "What next for e-Petitions", Hansard Society, 2012, http://www.hansardsociety.org.uk/blogs/press_releases/archive/2012/05/18/parliament-must-take-over-e-petitions-says-hansard-society.aspx

32  Open Data and e-governance make almost a third of all OGP country commitments, above n3.

33  Open Data initiative in the UK is directed at driving economic growth and embracing innovation, fostering social welfare and improving public services. More at: http://www.cabinetoffice.gov.uk/resource-library/open-data-white-paper-unleashing-potential

34  H. Yu, D.G. Robinson, above n4.

35  "Is Open Data a Good Idea for the Open Government Partnership?" submitted by Nathaniel Heller, 15 September, 2011, http://globalintegrity.org/blog/open-data-for-ogp, and "The Case Against Open Data in Yemen", http://www.globalintegrity.org/blog/case-against-open-data-in-yemen July 5, 2012.

transparency and improved service delivery, there are positive examples to highlight. The UK Department of Health posted data online regarding the medical practices of some 8,000 general practitioners to assist patients in their choice of medical care provider.[36] UK citizens are also able to monitor crime trends in their communities.[37] In the US, an educational start-up Civitas Learning initiated a project on big data in higher education[38] to better monitor students' progress, improve academic performance and reduce the drop-out rate by tapping into real-time data on "over 1m student records and more than 7m course records"[39] hosted by community colleges and four-year universities. Collating and making sense of large volumes of data on demographics, patterns in students' behavior and academic data such as coursework, scholarships, test results and evaluations of teaching styles will allow for the creation of computational models that

*In summary, it is all about citizens making an informed choice based on the data published and acting on this towards improved service delivery*

predict students' behavior and gain insight into which course combinations are most beneficial, which teaching styles are most effective, which risks contribute to failure to complete a degree program. Backed by US$4.1m funding, big data and predictive analytics will thus inform targeted educational reforms that might contribute to better quality education. Brazil published data on the salaries of 700,000 civil servants[40] while Bulgaria decided to publish daily budget spending as part of its Open Government Partnership efforts.[41] In Slovakia, two computer science students downloaded and processed 400.000 court decisions to glean connections between judges, plaintiffs and defendants.[42] The data set and visualization built on top of it are therefore available to the society at large for information and scrutiny; moreover, similar method could be applied to other data sets to boost transparency and accountability of governments. In summary, it is all about citizens making an informed choice based on the data published and acting on this towards improved service delivery. Service providers, in such cases, become compelled to compete and ensure high-quality products.

Several conditions must be met if the Open Data initiative is to deliver on its promise. Apart from the self-explanatory precondition of political commitment to openness (including in politically sensitive areas), legal issues around Open Data need to be arranged so that data re-use is not restricted, allowing any individual with an idea and enough technical skills to design an application that contributes to improved service delivery. Data from public sector entities should be standardized and published in a format that allows future re-use, effectively enables tracking and scrutiniz-

36   Government opens up GP data, the Guardian, June 7, 2012, http://socialenterprise.guardian.co.uk/en/articles/government-computing-network/2012/jun/07/gp-data-open-dh-patient-experience

37   Police.uk allows users to track crime for first time, the Guardian, June 6, 2012, http://www.guardian.co.uk/public-leaders-network/blog/2012/jun/06/police-crime-mapping-website-track

38   The growing industry of Higher Education Big Data, ZD Net, June 4, 2012, http://www.zdnet.com/blog/igeneration/the-growing-industry-of-higher-education-big-data/16324

39   Big data for Higher Ed: With USD 4,1M from First Round, Floodgate, Former Exec Launches Civitas Learning, Tech Crunch, May 31, 2012, http://techcrunch.com/2012/05/31/big-data-for-higher-ed-with-4-1m-from-first-round-floodgate-former-kaplan-exec-launches-civitas-learning/

40   Brazil Government Salaries Disclosed, July 3, 2012, The Rio Times, http://riotimesonline.com/brazil-news/front-page/brazil-goverment-salaries-disclosed/#

41   Bulgaria Shows Progress on Open Governance Commitments, July 25, 2012, http://blog.opengovpartnership.org/2012/07/bulgaria-shows-progress-on-open-governance-commitments/

42   Open data: decentralising and democratising social justice, the Guardian, February 19, 2013, http://www.guardian.co.uk/global-development-professionals-network/2013/feb/19/open-data-techsoup-restart-slovakia

ing government performance, as well as comparison over time. Efforts must be directed to engagement with the community of interested software and application developers as well, since the real impact of Open Data stems from its continued use. According to Tim Berners-Lee, the inventor of the World Wide Web, an Open Data initiative should: be demand driven; put data in context; support conversations around data; build capacity, skills and networks; and lead to collaboration on data as a common resource[43]. The Chicago Transit Authority adopted such an approach: data on schedules, prices, etc. are posted online with an Application Programming Interface, and an announcement to all interested members of the developer community to build web-based or mobile applications that will help improve the experience with and quality of city public transport."[44]

A lack of internet access points, inexperience in interacting with public authorities and/or complex, unintelligible data sets are likely to prevent many individuals from reaping the benefits of the digitalization and publication of government-collected data. Therefore, if there are no intermediaries (such as civic activists, journalists, entrepreneurs or others with a keen interest in data and technology) willing to dig deep, make sense of data and provide context, not to mention applications to processes such data, it is likely that the Open Data initiative will not achieve its potential. Another trap to be avoided is the conflation between Open Data and transparency. The prefix "open" is not sufficient to guarantee full disclosure of governments on issues of importance to civil society, the media and the public at large. However, open data does provide an additional layer for public scrutiny, albeit for a technically savvy, smart phone generation.

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43   T. Davies, "Ten building blocks of an open data initiative", August 28, 2012, http://www.opendataimpacts.net/2012/08/ten-building-blocks-of-an-open-data-initiative/

44   http://www.transitchicago.com/data/, last accessed on January 13, 2013; Tim Davies, "Ten building blocks of an open data initiative", August 28, 2012, http://www.opendataimpacts.net/2012/08/ten-building-blocks-of-an-open-data-initiative/

## Conclusion

This article attempts to shed more light on the prospects for fruitful citizen engagement in the Open Government Partnership era. Public participation and transparency were discussed and the conclusion highlights that the availability of digital tools, such as electronic petitions, has not despite expectations, achieved a marked change in public participation in policy making. Furthermore, Internet-based collaborative platforms have not contributed to the growth of politically involved communities. Such lessons, drawn from experiences in Germany, the UK and the US, might well apply to other countries. In addition, digital democracy is often unattainable for the poor and the vulnerable, denying them the much-needed opportunity to voice their concerns. Governments are responsible for meaningful engagement of all sectors of society, which requires the application of an array of both online and offline engagement strategies. It goes without saying that citizen engagement is by no means an easy task, and requires a clear intent. Governments must carve out the answer to the "why" for democratic, socially inclusive participation, if they wish to embrace citizens' inputs in service delivery, monitoring public performance and policy-making.

Similarly, deliberations on Open Data reveal that potential for genuine change in the daily lives of citizens is remarkable, albeit conditional upon several factors. A legal environment in which there are no restrictions for data re-use by interested parties, standardized datasets and enough civic activists willing to uncover the stories behind combined datasets will determine the extent to which citizens interact with governments and service providers, in pursuit of more transparent and efficient performance.

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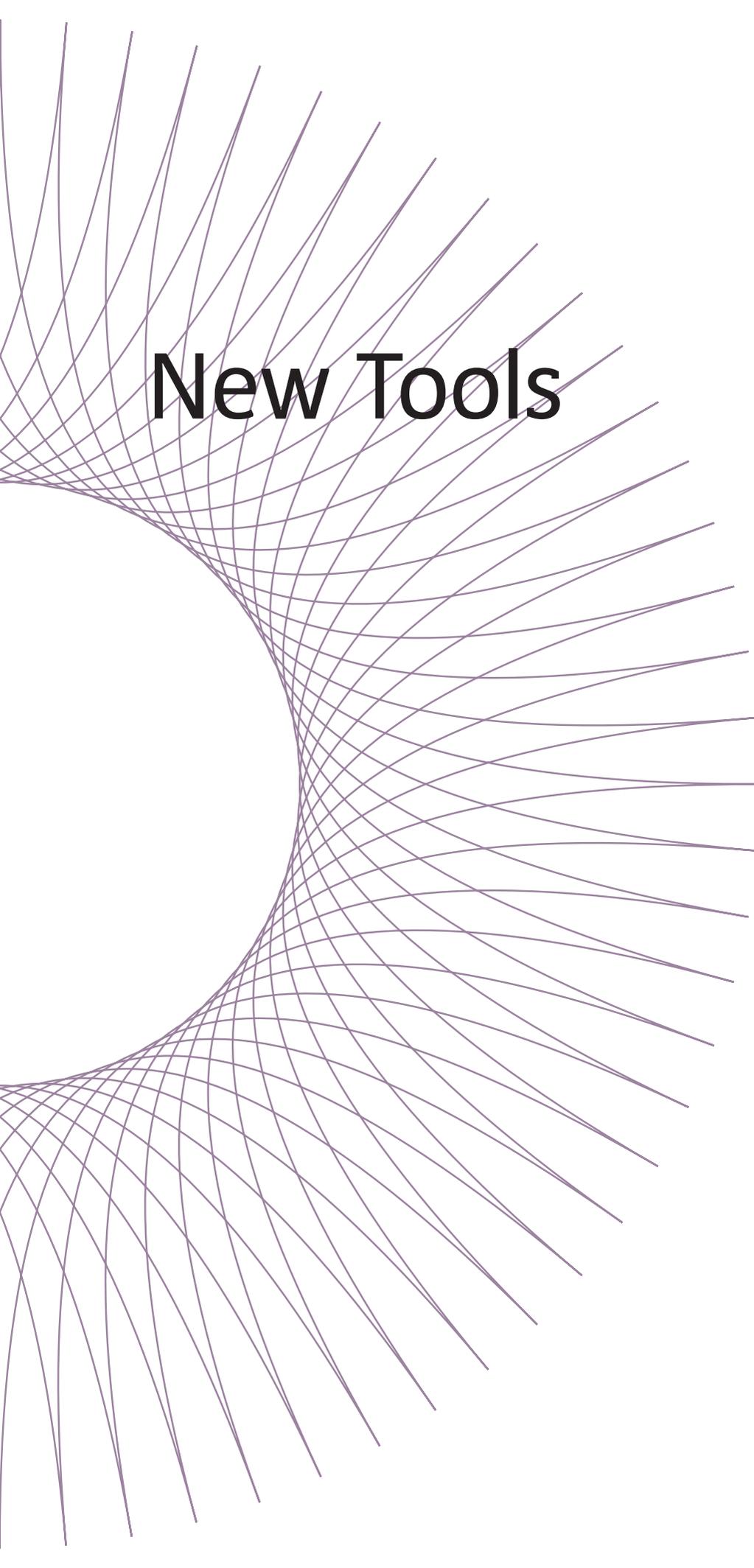
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# New Tools

# Civil Society Engagement in Integrity Initiatives

## Civil Society Work with the G20/B20 and the OGP as two examples of open stakeholder initiatives that promote transparent government

**HUGUETTE LABELLE** » CHAIR, Transparency International

ABSTRACT

This article aims to illustrate new and more inclusive models of governance developed in recent years in the framework of our globalized world. Multi-stakeholder initiatives (MSIs) are an example of new models of governance whose goal is to make sustainable decisions, which affect society as a whole on a multilateral basis. Governments have come to realize that they need to involve private sector and civil society in order to make fair and legitimate decisions because of the loss of confidence among citizens; the private sector needs to be held accountable because the decisions made by companies have a huge impact on society; and civil society is finally ready to take its due place in the global agenda. The following article shows two successful stories of participation in MSIs with Transparency International as a representative of the civil society: the experience of working with the G20 and the Open Government Partnership. Though these initiatives are structurally very different, both have a key role to play in the fight against corruption and both have demonstrated a willingness to involve civil society and other stakeholders in their work.

While there is increasing global awareness of the devastating effects corruption can have on peoples' livelihoods and the functioning of societies, the globalization of crime and the enormity of transnational illicit flows makes it impossible for governments to tackle the problem on their own. In part, it is for this reason that the engagement of civil society organizations such as Transparency International (TI) in global integrity initiatives is essential if the problem is to be effectively combatted. Since corruption often occurs at the nexus of government and business, all sides need to be on the same page if initiatives are to deliver sustainable impacts. The fact that only one in two people stated in the Global Corruption Barometer public survey in 2010 that they trust their governments to tackle corruption further emphasises the importance of a multi-stakeholder approach to promoting transparency.

The 20 major economies that make up the G20 represent two thirds of the world population and account for over 80 percent of the gross world product and 80 percent of world trade. Involving a group with such vast reach in the fight against corruption is essential; particularly considering that corruption is a major obstacle to economic growth, and therefore in line with the G20 Presidency's priority of increasing growth through trust, transparency and effective regulation. TI's ongoing involvement in the G20 Anti-Corruption Working Group and the B20 Anti-Corruption Task Force is an example of our belief in the importance of multi-stakeholder solutions, and the need for constructive dialogue and collaboration at a high level on anti-corruption issues between the public sector, the business sector and civil society. It

is our hope that by working closely with these key stakeholders, the Russian G20 Presidency will prioritize closing the implementation and enforcement gap and encourage a greater focus on concrete actions to stop bribery and fraud.

TI has also been involved in The Open Government Partnership (OGP); a multi-lateral initiative that was formally launched on September 20th, 2011. The purpose of the initiative is to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. TI has become a leader in coordinating transparency initiatives worldwide, and many of TI's chapters became involved with the OGP in its early stages. These chapters have been able to play an important role in pressing their governments to make new commitments to help advance open government issues in their countries, and many more have since followed suit. This is due to the peer-to-peer nature of the OGP, which allows civil society to constructively engage with their governments and hold them to account by ensuring commitments are being met.

Though these initiatives are structurally very different, both have a key role to play in the fight against corruption and both have demonstrated a willingness to involve civil society and other stakeholders in their work. TI's experiences working with the G20/B20 and the OGP should be used to assess how we make full use of such initiatives, with the overall aim of creating a world free from corruption in all sections of society.

## The role of civil society role in the G20 and B20

Based on the assumption that a severe lack of transparency, accountability and integrity contributed to the global financial crisis, TI started its engagement with the G20 soon after it was first convened in 2009. Taking advantage of its presence in 18 of the G20 members, including a liaison office at the European Union in Brussels, TI pursued a coordinated national and international advocacy strategy. This includes press and communications work, policy meet-

ings with government officials and cooperation with other civil society organizations (CSOs). From the start, we have called for civil society to be at the table and for the G20 political process to be more transparent and accountable.

We were rewarded at the 2010 Toronto Summit with the creation of a G20 Anti-Corruption Working Group, which was made up of one-two expert government officials from each G20 member. Subsequently, the G20 published its first Anti-Corruption Action Plan at the Seoul G20 Summit in November 2010, which initially had a two-year time frame.[1] This indicated recognition by the G20 that anti-corruption work was closely connected to the global financial and economic reform process and thus central to their agenda. Since then, TI has been constructively engaging with the group on an informal basis by coordinating submissions representing a coalition of hundreds of CSOs. When the G20 anti-corruption working group released its anti-corruption monitoring report at the 2011 summit in Cannes, it commended the contribution of civil society.

At the Los Cabos Summit in 2012 we advocated for an extension of the Anti-Corruption Working Group's mandate and successfully achieved it. The G20 Anti-Corruption Action Plan 2013 – 2014 is focused on "closing the implementation and enforcement gap" – as TI called for. We believe that the fight against corruption requires not only new laws and official regulations, but crucially, enforcement actions, enhanced transparency in day-to-day government activities and, a firm commitment to fight against impunity for those who abuse entrusted power.

The new G20 Anti-Corruption Action Plan renews previously made commitments, but with a focus on overcoming implementation challenges – of which they are many. For example, it is no secret that despite efforts by the G20 and the Financial Action Task Force, many financial institutions – not only in offshore financial centers, but also in G20 countries – still remain safe havens for illicit money from many sources, including corrupt officials, tax-dodging

companies and criminals. In July 2012, the US Senate uncovered the services provided by HSBC to Mexican drug cartels, and the UK financial regulator enquiry in June 2011 highlighted the failure of many British banks to properly deal with the risk of handling the proceeds of corruption. Therefore, we look forward to the results of the horizontal reviews of the treatment of high-risk customers and business relationships the G20 has committed to undertake.

> *It is increasingly recognized that corruption can only be tackled effectively through the joint action of all stakeholders, i.e. the public sector, business and civil society*

To hold multinational companies to account on their tax payments, the G20 should mandate corporate reporting on profits and losses at a country level, as required by the Dodd Frank Act in the US[2] and by draft EU legislation. A 2012 TI report on Transparency in Corporate Reporting shows that while more companies are reporting on their anti-bribery programs than in 2009, levels of country-by-country reporting are very poor. This is why the legislative progress in Washington DC and Brussels to oblige oil, gas and mining companies to publicly disclose financial data such as royalty payments to governments, despite persistent lobbying from extractive companies against it, marks such an important milestone in efforts to make sure that companies publish what they pay, and countries that should be made rich by their natural resources, do not stay poor. In addition, automatic exchange of tax related information as opposed to on-request would greatly facilitate international cooperation against tax evasion.

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1    www.g20.utoronto.ca/2010/g20seoul-anticorruption.pdf

2    F. Vogl, "Sushine on the horizon for the oil, gas and mining cash," August 24, 2012, http://blog.transparency.org/2012/08/24/sunshine-on-the-horizon-for-the-oil-gas-and-mining-cash/

Another enforcement challenge can be found in the area of combating bribery in international business. G20 members China, India, Indonesia and Saudi Arabia should commit voluntarily to ratify the OECD Anti-Bribery Convention. TI's "2012 Exporting Corruption? Report" found that only seven out of the 37 signatories actively enforced the Convention. It is paramount that all G20 countries set up robust legal mechanisms in this regard and promote compensation to the victims of foreign bribery cases.

> *Mexico has undertaken important reforms with the aim of building a more transparent state, and has opened up spaces for collaboration between the government and civil society*

In January 2012, TI was the only CSO to be invited by the Mexican G20 Presidency to join the Business 20 (B20) Task Force on Improving Transparency and Anti-Corruption, a group of leading companies that meets around the G20 and contributes to its discussions.

It is increasingly recognized that corruption can only be tackled effectively through the joint action of all stakeholders, i.e. the public sector, business and civil society. Furthermore, there is a growing trend to include the private sector in development initiatives to ensure that it becomes part of the solution. But can companies that are driven by business interests really be part of the solution to corruption? And can multi-stakeholder groups (MSGs) made up of actors with very different aims and approaches really lead to effective solutions?

It turned out that CSOs do have some joint objectives with business, such as the extension of the mandate of the G20 Anti-Corruption Working Group beyond 2012. In addition, TI's involvement was able to help shape recommendations on anti-corruption for small-and medium-sized enterprises (SMEs), which we formulated together with the International

Chamber of Commerce. Some of those recommendations call for Governments to require that SMEs "represent" that they have adequate anti-corruption programs in place as a condition for participating in public procurement and for companies to engage SMEs through their supply chains and provide them with concrete support in the adoption of best practices in resisting corruption. Furthermore, we successfully advocated for the inclusion of the recommendation to ensure citizen participation in public procurement processes through the use of new information technologies. Finally, we agreed on language to formalize the dialogue between government and business, including "international governmental and on specific issues non-governmental organizations."

Of course, such engagement requires compromise, and we were disappointed at companies' resistance to agreeing to enhance corporate transparency through country-by-country reporting on profits and payments or the lack of an explicit monitoring role for civil society in sectoral initiatives. Nevertheless, overall, it was a worthwhile and fruitful cooperation.

TI has now been invited to continue to participate in the B20 Anti-Corruption Task Force under the Russian G20 Presidency. From initial communications it looks like corporate transparency is on the agenda. We look forward to continuing our constructive engagement with the G20 governments and the B20 Anti-Corruption Task Force.

## Citizen Engagement and the Open Government Partnership

In September 2011, a new voluntary global initiative was launched to foster open government around the world – The Open Government Partnership[3] (OGP). The aims of this initiative, as enshrined in the Open Government Declaration[44], are to increase public access to information at every level of government; strengthening the level and quality of civic participation in public

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3    http://www.opengovpartnership.org/

4    http://www.opengovpartnership.org/open-government-declaration

policy making and monitoring; having effective anti-corruption policies; and harness new technologies to deliver on these commitments to openness and accountability. To date, more than 50 countries around the world have signed on to the OGP, which requires them to endorse the declaration as well create and deliver on national action plans that implement commitments to those principles. Such plans are meant to be developed in rigorous and inclusive consultation with civil society.

TI is fully in line with the aspirations and commitments enshrined in the Open Government Declaration, as they embody TI's mission over the last two decades, which is "to stop corruption and promote transparency, accountability and integrity at all levels and across all sectors of society." For this reason, many of TI's national chapters around the world have been actively engaged, often leading, national civil society coalitions that are participating in the OGP initiative in order to advocate for national action plans that genuinely represent real and concrete advances in open government, based on the vast experience of the movement in promoting these issues. Subsequently, these coalitions are working to ensure those commitments are implemented.

As an example, in recent years Mexico has undertaken important reforms with the aim of building a more transparent state, and has opened up spaces for collaboration between the government and civil society to solve problems that affect society at large. One of the most important initiatives has been the Mexican participation in the OGP.

In order to implement the OGP in Mexico, a Tripartite Secretariat was set up as a forum to ensure that commitments were being implemented and monitored. The Tripartite Secretariat is composed of a representative from the Ministry of Public Administration (SFP), from the Federal Institute for Access to Public Information (IFAI) and from civil society. Within this framework, an initial action plan was developed, however, it generated perceptible discontent among the civil society participants who, upon noting that their demands had not been reflected, negotiated with the government an expanded action plan. With the proposals raised by civil society groups and accepted by the government, a former unilateral process changed into a multi sectorial exercise.

One thing to note about the Mexican model compared with other countries is that the process for the elaboration of the commitments went beyond just being a mere consultation: it has been a collaborative procedure between civil society and the government. The extended action plan incorporated commitments from 21 federal agencies and eight CSOs, including Transparencia Mexicana, the National Chapter of TI. One of these commitments, which emerged from the collaboration among civil society and the government, was the creation of a National Catalogue of Social Programs that incorporates for the first time, open data information in real time of more than 2,000 social programs from federal agencies and states.[5]

Likewise in Peru, TI's national chapter, Proética, has been working with three other CSOs and four public sector institutions to develop the national action plan and mechanisms to monitor its implementation.

Mexico and Peru are just two out of many examples of best practice cooperation and engagement between civil society and government to work together to generate concrete advances towards fully Open Government. However, many other countries have involved civil society in a less constructive way in the design of the national action plans, producing national action plans of limited ambition or relevance to core challenges faced by society.

In Central America and the Dominican Republic, TI's chapters responded to this reality by collectively calling on their governments to revise their national action plans and allow civil society to effectively participate in order to achieve real and concrete objectives in line with the principles of the OGP. The chapters insist that such participation is necessary to generate a national action "plan for the country, not the government." Time will tell whether government will take on board their appeal.

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5   For more information please visit:
http://www.programassociales.mx

In Eastern Europe and Central Asia, there has also been a great deal of dynamism and engagement by government and civil society in the OGP. For example, in Georgia, after the having produced initial drafts, which were criticized by local civil society for not generating new commitments beyond its pre-existing anti-corruption reform agenda, a requirement of the OGP, the Minister of Justice scrapped its drafts and worked closely with three leading national CSOs, including TI Georgia, to draft a new plan yielding a set of new commitments beyond the existing reforms that were in line with the principle objectives of the OGP.

A positive element of the OGP is that the initiative is a fluid and iterative process that not only allows for peer-to-peer review among governments, but also enables civil society to constructively engage, and if need be, challenge governments in ways that can lead to stronger revisions of the national plans, as has been the case in Mexico, Georgia, and many other countries. Overall, the OGP still has a way to go to ensure that it does not become a vehicle to tout words and not action, or to just be an instrument for new e-Government platforms that do not genuinely deliver high quality and accessible information to an engaged citizenry. However, citizens are responsible for ensuring that they take advantage of the platform for dialogue and engagement that the OGP provides to push for national action plans that genuinely advance communities towards Open Government, and in turn hold governments accountable to their commitments.

The experience of the anti-corruption movement has made it indisputably clear that for any of this to be achieved, real and inclusive engagement of people, especially those made most vulnerable to corruption, is necessary to ensure a sustained will for a truly Open Government. In the recently published report by TI Georgia,[6] despite the achievements noted above, it was also underscored that "(m)ost of the people and local CSOs in Georgia have little knowledge, proficiency or interest in OGP,

which makes it a luxury policy of an exclusive club of organizations only." There is no evidence to suggest that the lack of people's engagement in the OGP in Georgia is unique.

There is a great deal more to be done to ensure that people understand the commitments being made (or not) by their governments in this initiative and why those commitments matter in their daily life. This is the challenge that civil society must embrace to ensure the long-term sustainability of the work undertaken. Once it is possible to demonstrate how the successful implementation of concrete high-value actions by governments in their national action plans helps improve lives, civil society will be able to ensure the sustained demand of citizens to open government.

## Conclusion

2013 marks 20 years since TI was founded. The past 20 years have been marked by a desire to build broad coalitions in the fight against corruption. The creation of bodies such as the G20 and the OGP, and the fact that their foundation has been multi-stakeholder cooperation, is a sign that world leaders in business and government recognize that the road to sustainable transparency and accountability lies in such coalitions.

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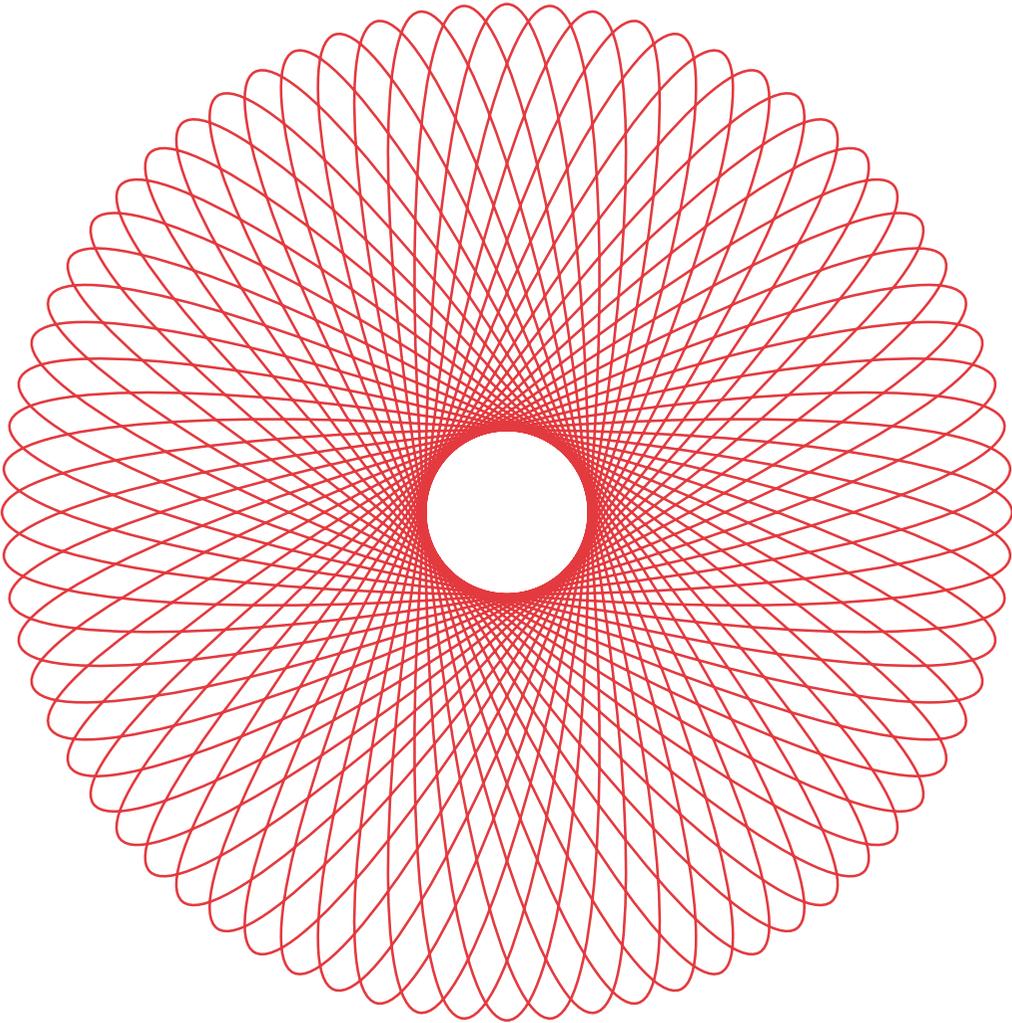
# Bringing Citizens In:
## Getting More out of the Multi-Stakeholder Approach

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## ABSTRACT

Government officials, private firms and citizens have a shared interest in achieving good governance in sectors like infrastructure and extractive industries, and international development initiatives increasingly seek to employ a multi-stakeholder approach. In practice, multi-stakeholder groups (MSGs) frequently fall short of expectations, often because the citizenry and civil society is a "missing stakeholder," which fails to engage as an equal partner. This article focuses on two ways to mitigate this issue and "bring citizens in." Donor investment in civil society must occur long before the creation of MSGs, and initiative outputs must be made comprehensible to the broader public.

## The Multi-Stakeholder Ideal

In theory, government officials, the private sector and citizens have a shared interest in promoting transparency and clean governance in high-revenue sectors like the infrastructure and extractive industries. For the citizenry, the benefits of reduced corruption are clear - better infrastructure, more efficient government spending and greater provision of public goods.[1] Private sector actors can benefit from a level playing field with regularized practices, which is a departure from the bribery and backroom deals that often characterize public procurement. Moreover, all governments, no matter how dysfunctional, must maintain a minimal level of public support to stay in power. Reducing corruption and promoting transparency can be key to garnering that support.[2]

Beyond this shared interest, the three stakeholders have comparative advantages in helping promote good governance in procurement and other government processes. Citizens, and the civil society organizations (CSOs) they create, are best placed to serve as independent monitors of these processes. CSOs also provide an institutionalized link between citizens and the state, while the private sector has intimate knowledge of procurement processes and the technical capacity to assist in monitor-

ing. Ultimately though, the success or failure of multi-stakeholder processes depends on government actors, and their authority is needed to give muscle to any transparency initiative.[3]

It is this set of dynamics - a shared interest and comparative advantages - that has caused the development community to increasingly turn towards a multi-stakeholder approach to manage high-revenue sectors. Broadly defined, the multi-stakeholder approach encompasses any initiative that brings different types of actors together to achieve a shared goal. These initiatives can be further (albeit loosely) divided into multi-stakeholder dialogues (MSDs), multi-stakeholder platforms (MSPs) and multi-stakeholder groups (MSGs).[4] MSGs are bodies that have been created to oversee the implementation of policy and they often have the mandate of implementing a specific development initiative. This article focuses on citizen actors in the context of MSGs, but the key insights are likely to be applicable to other initiatives that aim to bring citizens in.

The use of MSGs has become increasingly common and has been notably featured in the two most prominent global transparency initiatives - the Extractive Industries Transparency Initiative (EITI) and the Construction Sector Transparency Initiative (CoST). CoST, a new Department for International Development program, brings together members of government, the private sector and civil society in an MSG aimed at improving accountability in the construction sector. CoST MSGs aim to encourage the disclosure of material project information (MPI) on a subset of public construction projects and in turn assess whether the projects are meeting the details of the original procurement agreements. The hope is

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1    P. Kenny, "Measuring and Reducing the Impact of Corruption in Infrastructure," 4099, The World Bank, 2006. See also S. Rose-Ackerman & R. Truex "Corruption and Policy Reform, Yale Law & Economics Research Paper No. 444," for a discussion of the nature of corruption in procurement, 2012.

2    M. Seligson, "The Impact of Corruption on Regime Legitimacy: A Comparative Study of Four Latin American Countries, " Journal of Politics, 64 (2), 408-433, 2002, Seligson finds that corruption experiences substantially decrease citizens trust in government and regime legitimacy more broadly.

3    R. Truex & T. Soreide, "Why Multi-stakeholder Groups Succeed and Fail, in S. Rose-Ackerman and T. Soreide (eds)," The International Handbook on the Economics of Corruption: Volume 2. Northhampton, MA: Edward Elgar Publishing, 2002.

4    As Truex and Soreide discuss, an MSD refers to the situation when "stakeholders are brought together to understand each other's different perspectives and experiences and possibly find common ground for solutions to a challenge." MSPs are similar, but they have decision-making authority and bargain over specific policies.

that transparency reduces corruption and allows governments to get more "value for their money." CoST has been officially launched in Guatemala, the UK, Ethiopia, Tanzania, Zambia, Malawi, Vietnam, and the Philippines.[5]

## Departure from the Ideal

While the multi-stakeholder approach is compelling in theory, in practice MSGs often significantly depart from the ideal. Truex and Soreide outline several barriers to effective MSG performance, including: weak participation patterns among members; conflicts of interest within the group; difficulties achieving consensus and meeting external deadlines; a lack of legitimacy and high-level political support; and a lack of needed inputs at the country level.[6] In every country, the performance of CoST MSGs is directly related to the presence or absence of these barriers, and solutions must be tailored to fit the needs of the particular group.

While there are numerous barriers to effective MSG performance, this article focuses on one critical barrier: the imbalances in stakeholder capacity and the marginalization of citizens. In theory, for CoST and other multi-stakeholder initiatives to work effectively, all three stakeholders must have an equal footing within the MSG. However, in practice the citizen stakeholder - often represented by a CSO or group of CSOs - ends up taking a backseat to the interests of private sector and government actors. The multi-stakeholder approach assumes the presence of organized citizen groups, but in many developing countries, civil society is either weak or non-existent.[7] Scholars of MSPs note a similar set of concerns, where citizens are given

little more than token consultation.[8] This issue is so pervasive as to be described by some academic and policy observers as the "missing stakeholder problem."

> *In places without sufficient "civil society infrastructure," donors must first invest in the creation of these groups before incorporating them into an MSG*

At best, MSGs suffering from this issue weaken the effects of the transparency initiative by failing to properly engage the citizenry, for without a strong citizen presence within the body, the work of an MSG can fail to reach its intended audience. At worst, the citizen representative can become complicit in a multi-stakeholder initiative that does little more than perpetuate a corrupt status quo. In the case of CoST, if government and private sector actors do not truly want transparency, the MSG can ultimately perpetuate the collusive equilibrium.[9] While I cannot highlight any specific examples, in the interest of protecting interview participants, observers across multiple participant countries expressed doubts as to whether government and private sector actors would really be willing to reveal information that could point to their own corrupt dealings. The latter becomes even more likely in cases where civil society is weaker.

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5    Please refer to the CoST website for more information on the program. http://www.constructiontransparency.org/

6    Truex & Soreide, above n3.

7    M. Bratton, "the State: Civil Society and Associational Life in Africa," World Politics 41 (3): 407-430, 1989; Francis Fukuyama, Social Capital, Civil Society, and Development. Third World Quarterly 22 (1): 7-20, 2001; Lise Rakner, "The Paradox of Party Institutionalization in a Liberal Era: The Cases of Zambia and Malawi," 2010, presented at the Election Process, Liberation Movements and Democratic Change in Africa, Maputo, Mozambique.

8    D. Edmunds, and Eva Wollenberg, "Strategic Approach to Multistakeholder Negotiations," Development and Change 32: 231-253, 2001; N. Faysse "Troubles on the Way: An Analysis of the Challenges Faced by Multistakeholder Platforms," Natural Resources Forum 30 (3): 219-229, 2006; P. Wester, Douglas J. Merrey, and Marna de Lange, "Boundaries of Consent: Stakeholder Representation in River Basin Management in Mexico and South Africa," World Development 31 (5): 797-812, 2003.

9    T. Soreide and R. Truex, "Collaboration against Corruption? Multi-stakeholder Groups in Natural Resource Management," U4 Issue 2011:5, 2011.

## Bringing Citizens Back In

Given the tendency of MSGs and transparency initiatives more broadly to suffer from low CSO engagement, how exactly can citizens be brought back in? How can citizens go from being the "missing stakeholder" to an empowered stakeholder? This article focuses on two important solutions: investing in the media and CSOs prior to the initiation of a multi-stakeholder initiative and ensuring that the release of information is digestible to the public.

{ *A second way to "bring citizens in" is to ensure that initiative outputs are interesting and digestible to the broader public* }

The success of transparency initiatives in the context of the multi-stakeholder approach depends on the meaningful engagement on the part of citizen stakeholders. Donor organizations must resist the temptation to simply transplant an MSG into a country context where there is little existing civil society. True, the multi-stakeholder initiative may help spur the creation of CSOs to a degree, but this is not their intended purpose. In places without sufficient "civil society infrastructure," donors must first invest in the creation of these groups before incorporating them into an MSG. Similarly, transparency initiatives are most powerful in places with a vibrant and independent press that can disseminate project outputs. Investments here should predate investment into transparency programming, or at least occur simultaneously.

The importance of creating civil society infrastructure is exemplified in the experience of the CoST MSG in the Philippines, which is viewed among participants as a success story. In response to large percentages of the public works budget being lost to leakages (30-50

percent by some reports),[10] a number of citizen initiatives arose organically in the road sector, including the Concerned Citizens of Abra for Good Government, Bantay Lansangan (Road Watch) and many others. Road Watch resembles a multi-stakeholder initiative to some degree, in that it is a partnership of several existing CSOs, industry organizations and academic groups. As program documents describe, Bantay Lansangan "can be viewed three ways: as a project; as an organization; or as a citizen initiative."[11] For our purposes, the most important point is that prior to the initiative of CoST in 2008, the Philippines already had a vibrant citizen accountability movement. Vincent T. Lazatin, the current CSO representative within the CoST MSG, is the head of Bantay Lansangan and the Executive Director of the Transparency and Accountability Network TA), which includes 34 different CSOs, NGOs, and research institutions. Mr. Lazatin is also the chairperson of the CoST MSG in the Philippines, which highlights the fact that in this specific case civil society is by no means a missing stakeholder.[12]

Unfortunately, the same cannot be said for all CoST participant countries. In a series of interviews conducted for research on the efficacy of MSGs, observers of the groups in Zambia, Ethiopia, and Vietnam lamented the weakness of civil society in the CoST program. In Ethiopia, the recently passed Charities and Societies Act dubs any NGO that receives more than 10% of its funding from outside sources a "foreign NGO." These organizations are disqualified from participating in many basic advocacy activities and therefore crippling the ability of aid organizations to promote civil society.[13]

To summarize, civil society cannot be grown overnight, and it cannot be expected to take

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10   Leakages occur when funds are lost due to embezzlement and other forms of project mismanagement.

11   Affiliated Network for Social Accountability, "The Bantay Lansangan (Road Watch) Experience: Improving the Philippine Road Sector through Vigilant Monitoring and Volunteerism," 2010, http://www.ansa-eap.net/assets/200/59-1-4_Bantay_Lansangan_Road_Watch_Experience.pdf

12   Please refer to the CoST Philippines website for more information. http://www.costphilippines.com/

13   Truex & Soreide, above n3.

part in MSGs as an equal stakeholder if it is weak or non-existent. Therefore, rather than simply creating MSGs in the hope that civil society coalesces for an initiative, it may be necessary to first invest in CSOs themselves.

A second way to "bring citizens in" is to ensure that initiative outputs are interesting and digestible to the broader public. Transparency initiatives like CoST and EITI hinge on the idea that the release of information will allow a wider audience to observe the behavior of actors in those sectors. This, in turn, should improve sector governance and reduce corruption. This chain becomes interrupted however, if no one takes an interest in the information that is released. This may seem like a mundane issue, but it is a real concern for initiatives in complex sectors and in places where citizens take minimal interest in government affairs.

CoST MSGs, for example, aim to encourage the release of material project information on construction projects to the general public. There is no harm in this, of course, but how many citizens actually follow the construction industry? It is likely that the audience best positioned to process this sort of information is not the citizenry, but government officials and construction firms. Some of them may actually want better sector governance, but others may seek to perpetuate the corrupt status quo.

There are two primary ways around this issue. The first is to try to foster greater citizen interest in sector governance through the creative dissemination of information. For example, government "report cards" have been employed with some success in other sectors. The media can also play an important role by drawing attention to key contracts or budget discrepancies. In Uganda, for example, Reinikka and Svennson find that a newspaper campaign significantly reduced the leakage of an education capitation grant. Starting in 2004, the Ugandan government published the details of education funding processes in local newspapers throughout the country. This allowed the citizenry and schoolmasters themselves to better follow funds through different tiers

of government.[14] The Uganda example is not a multi-stakeholder initiative, but it does illustrate how the release of information can spur citizen involvement when done properly.

The second is to focus the release of information on areas that most directly affect the everyday lives of citizens. Undoubtedly, part of the reason for the success of the Uganda newspaper campaign is that parents care about the wellbeing of the education system, and this interest spurred public attention to the campaign. Some sectors do not have this sort of natural link with citizen interest, but it must still be considered as much as possible. Critics of EITI argue that the initiative would do better to focus on the expenditures resulting from resource extraction, rather than simply the revenue stream.[15] Citizens are more likely to be interested in how government dollars are spent rather than raised.

## Conclusion:
## Better When Together?

This articles argues that the primary barrier facing MSGs is a lack of meaningful participation on the part of citizens and civil society, the so-called "missing stakeholder problem." Solving this problem may require up front investment in civil society and more attention to the interaction between citizen interest and program outputs. The experiences of CoST MSGs suggest that attention to these factors can prove critical to the success or failure of a transparency initiative.

In conclusion this article addresses a more speculative point in the hope that it will stimulate future research and discussion among academics and practitioners alike. While there is something inherently appealing about the multi-stakeholder approach, it may be the case that stakeholders do not work better simply because they are working together.

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14    R. Reinikka & J.Svensson, "The power of information in public services: Evidence from education in Uganda", Journal of Public Economics 95 (7-8), 956- 966, 2011.

15    I. Kolstad & A. Wiig, " Is Transparency the Key to Reducing Corruption Resource-Rich Countries?", World Development 37 (3): 521-532, 2009.

One of the main conceptual issues with CoST is that the MSG is comprised of the very actors it is supposed to be monitoring - government officials in procurement and construction firms - and there is a clear conflict of interest for these actors. For their part, citizen watch-dog groups may be better served to exist outside the initiative rather than potentially compromise their integrity in a collusive MSG. Future initiatives must consider not only "how to bring citizens in," but whether they should be brought in at all.

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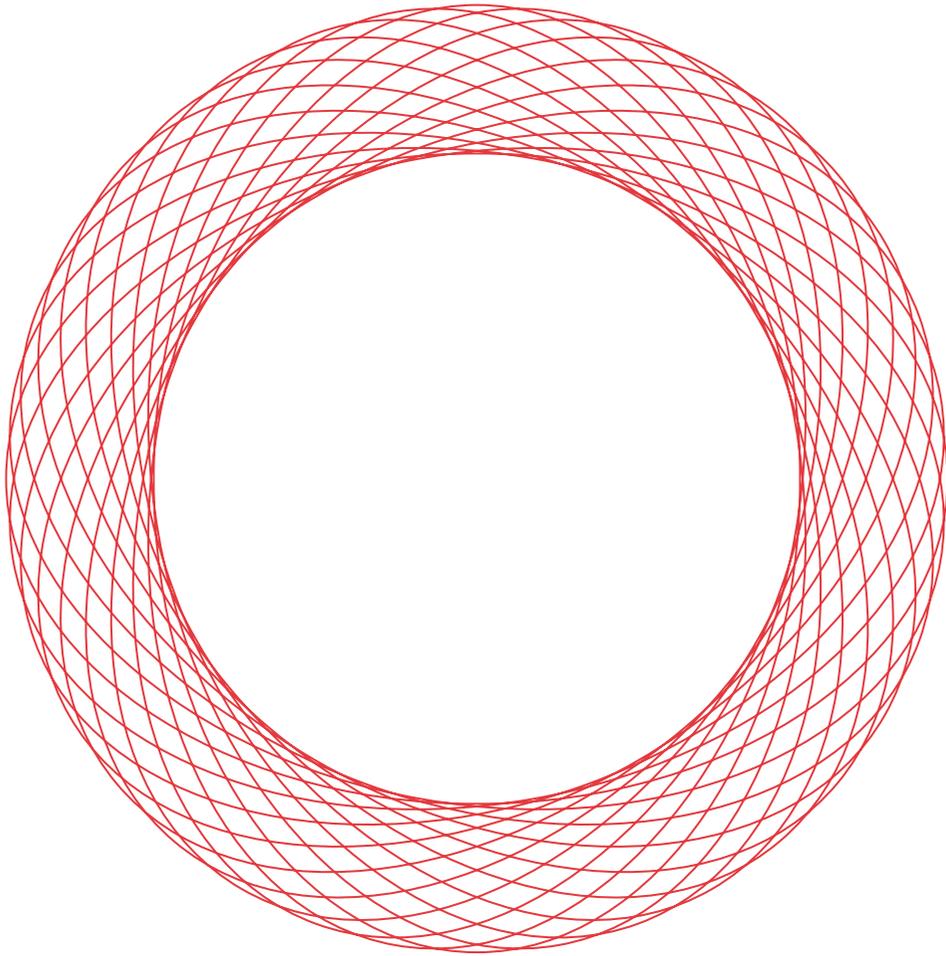
# Building Transparency and Accountability in the Oil Industry in Africa

## What Next for the Extractive Industries Transparency Initiative (EITI)?

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A B S T R A C T

This paper seeks to contribute to the debate about EITI's effectiveness and future. In particular, it assesses EITI's track record in sub-Saharan Africa, and analyses whether and how the multi-stakeholder initiative can remain relevant, particularly in this post-Arab Spring era. The relevance of these questions derives from two main findings: 1) that all across Africa, citizens and civil society groups are becoming more vocal, and are forcing gradual change in the debate on and actual management of their natural resources; but 2) that as the Arab uprisings and anti-corruption movement show, these changes and debates are, for the most part, taking place outside the EITI platform. These findings emanate from desktop research and field visits undertaken between January 2008 and January 2013.

The issue of oil-led development has wider implications for sub-Saharan Africa. Since the mid-1990s, several economies from the region have experienced high growth rates thanks largely but not solely to their natural resources, and in particular, oil. As participants at a recent meeting on Africa's economic growth remarked,[1] the resources boom experienced in the sub-continent has sustained and/or increased governments' tax receipts and revenues, attracted investment in the sector and the region, and to some extent, cushioned the effect of the global financial crisis in the region. Furthermore, the resources boom has done something fundamental; it has challenged the perception that African countries, especially resource-rich ones, cannot grow substantially or are likely to grow slower than their resource-poor peers over a period of time.

The "resources story"[2] as most enthusiastic commentators and investors see it, has a flipside, and this is that human development has been slow to catch up. In fact, the most recent United Nation's Human Development Index shows that in 2011, sub-Saharan Africa continued to have the lowest aggregate level of human development indicators.[3] Take the case of Nigeria, sub-Saharan Africa's largest oil exporter. Ranked 156 out of 187 countries

in the index, it has an average life expectancy at birth of less than 52, and up to 60 percent of its population - almost 100 million people - are living in poverty.[4] According to analysts, these conditions represent the most fitting illustration of the phenomenon known as the "resource curse"[5] or the "paradox of plenty"[6] caused in part by political and economic governance deficits.

EITI was created more than ten years ago as a response to this complex issue and as a policy tool that could stimulate or encourage the effective management of natural resource revenues for pro-poor development. In essence, it is an international standard-setting multi-stakeholder initiative comprising governments, companies, investors, civil society and international organizations. Its main thrust is that by strengthening transparency of natural resources, this "can reduce corruption, and that the revenues from extractive industries can transform economies, reduce poverty and raise the living standards of entire populations in resource-rich countries"[7]. However, has it achieved its much touted developmental outcomes? If not, where does its future lie?

This paper seeks to contribute to the debate about EITI's impact and future.[8] In particular, it assesses the EITI's track record in sub-Saharan Africa, and analyses whether and how the multi-stakeholder initiative can remain relevant, particularly in this post-Arab Spring era. The relevance of these questions derives from two main findings: 1) that all across Africa, citizens and civil society groups are becoming more vocal, and are forcing gradual change in the debate on and actual management of their

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1    The meeting, "Africa Africa's Economic Growth: Transitory or Transformative?", was held at Chatham House, London, United Kingdom, on April 20, 2012. See the meeting summary online, at http://www.chathamhouse.org/sites/default/files/public/Research/Africa/200412summary.pdf

2    R. Khan, Regional Head of Research, Standard Chartered, speaking at the aforementioned conference.

3    African Economic Outlook 2012, http://www.africaneconomicoutlook.org/en/outlook/human_development/

4    African Economic Outlook, "Nigeria," 2012, http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/PDF/Nigeria%20Full%20PDF%20Country%20Note.pdf

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6    T.L. Karl, The Paradox of Plenty: Oil Booms and Petro-States, 1997, Berkeley: University of California Press, 1997.

7    EITI Article of Association, Article 2.2.

8    The paper is part of a doctoral study on oil governance in Angola that received funding from Coventry University and the Funds for Women Graduates (FfWG).

natural resources; but 2) that as the Arab uprisings and the anti-corruption movement - the two latest cases in point - show, these changes and debates are for the most part, taking place outside the EITI platform.[9]

The article considers whether, and to what extent African civil society organizations and citizens groups have built on the initiative to demand more transparency and accountability from their governments, as well as extractive industries (EI) corporations operating in the sub-continent. It also looks at the innovative methods through which these groups are showcasing their self-agency, using among others, the unexpected case study of Angola. The final section of the article reflects on these and proposes a way forward.

## EITI - The What and How

EITI is a voluntary, multi-stakeholder initiative (MSI), contingent upon governments meeting five sign-up requirements in order to gain "candidate" status: 1) committing to implement EITI; 2) committing to work with civil society and the private sector; 3) appointing an individual to lead on the implementation of EITI; 4) since 2011, establishing a multi-stakeholder group (MSG) with representatives from governments, companies and civil society, which should oversee the implementation of EITI; and 5) in connivance with other stakeholders, producing a fully-costed work plan containing measurable targets and a timetable for implementation, and incorporating an assessment of capacity constraints.[10]

Once countries earn their "candidate" status, they should go through the following process. First, governments should require EI companies - private or state-owned - to make public all material revenues paid to them, in-

> *All across Africa, citizens and civil society groups are becoming more vocal, and are forcing gradual change but as the Arab anti-corruption movement show, these changes are taking place outside the EITI platform*

cluding in-kind payments, infrastructure provisions and barter-type arrangements made to or with the host country government. They must then record these payments and entrust an independent and credible administrator to reconcile the figures disclosed by both government and companies applying international auditing standards, albeit not defined; publish the reconciliation report and opinions on any discrepancies that may have occurred and as of July 1, 2011, do so within 18 months. Finally, once the MSG has evaluated the information provided, an external organization/individual or "validator" is tasked to verify or "validate" the reports and produce a validation report.[11]

Under EITI Rules, 2011 edition, validation should be completed within two and a half years from the date of the country's admission as a candidate country. The governance of this process is overseen by an international board comprising an independent chair, an international secretariat and five representatives from each stakeholder group, namely, implementing countries, civil society organizations, and industry and investment companies. Its implementation is funded through a country's government, a World Bank-managed Multi-Donor Trust Fund, or by multilateral and bilateral donor agencies.

EITI has gained high international visibility and consolidated its status as a global standard-setting initiative, due in part to the high-level endorsement received from investors, the G8 and G20 member states and major donors such as the World Bank. More importantly perhaps,

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9   These findings are drawn from desktop research on, and field visits in, Angola, Cameroon, the Republic of Congo and Nigeria between January 2008 and January 2013. As such, the reader should be mindful of the fact that the author speaks entirely from her experience of these countries, and recognizes that these findings may be different in other contexts.

10   http://eiti.org/eiti/implementation/signup

11   On the entire process, see EITI Rules, 2011 Edition, EITI International Secretariat, Oslo: Norway, http://eiti.org/files/EITI_Rules_Validations_April2011_1.pdf

is its acceptance among producing states. As of January 25, 2013, EITI had 70 oil, gas and mining participating companies, among which 24 are oil companies; and 37 member countries, of which 18 are compliant countries and 19 candidate countries.

> *Transparency tends to be tracked alongside other governance reforms and as such, it is difficult to attribute gains made solely to transparency initiatives*

## Assessing the Effectiveness and Future of EITI: A Few Notes

This paper argues that EITI has not brought the societal transformation that was arguably its much touted objective. To be sure, this is not a new finding. The same point was made in a 2011 evaluation,[12] and in subsequent blogs posted on the International Secretariat's website.[13] One of the factors that pushes this issue right to the forefront of discussions on resource governance now, and actually demands more attention than it seems to be receiving, is the current revolutionary wave that has been sweeping across the Middle East and sub-Sahran Africa. Whilst not romanticizing this popular movement, there is no doubt in-

deed that it has wider implications for current governance approaches promoted by initiatives such as EITI. In particular, the fact that the most dramatic changes happened in countries like Libya and Egypt - non-EITI member states, whose repressive governments were somewhat accommodated -, increases the importance of the question about the relevance and future of the MSI.

In their - largely state-centric - analysis of the challenges of measuring the effectiveness of transparency, Gillies and Heuty of Revenue Watch Institute (RWI) argue that "EITI countries cannot be compared with those producers that stay out."[14] This paper disagrees fundamentally with that argument. Taking a people-centered approach, it argues instead that it is precisely *because* of the reasons and events cited above, and *because* of the increasing political instability experienced in places like Mali and Nigeria, both EITI implementing countries, that EITI's standard setters need to start thinking outside the EITI box, in order to build on the progress made in the *social arena* by others, more so, by some of its intended beneficiaries.

One point Gillies and Heuty rightly make, and one the reader should be mindful of though, is that transparency tends to be tracked alongside other governance reforms and as such, it is difficult to attribute gains made solely to transparency initiatives.[15] They explain that although transparency can alter the incentives of key powerful actors through internal and external dynamics depicted in Figure I, whether, and the extent to which transparency actually leads to policy improvements, would depend on a host of variables which may not exist, particularly in difficult contexts.[16] In this regard, and in the contexts specified below, members of civil society groups interviewed view EITI as the

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12    Scanteam, Achievements and Strategic Options: Evaluation of the Extractive Industries Transparency Initiative, Final Report, May 2011, http://eiti.org/files/2011-EITI-evaluation-report.pdf

13    See Jean C. Katende, "The New Challenge for EITI: Becoming a Tool for Improving the Living Conditions of Poor Populations," Extractive Industries Transparency Initiative, 25 January 2013, http://eiti.org/blog/new-challenge-eiti-becoming-tool-improving-living-conditions-poor-populations;  D. O'Sullivan, "EITI Needs to Become More Ambitious and More Realistic," 27 September 2012, http://eiti.org/blog/eiti-needs-become-more-ambitious-and-more-realistic; K. Lay, "Making Transparency Work for Development," 9 January 2013, http://eiti.org/blog/making-transparency-work-development-nigeria

14    A. Gillies and A. Heuty, "Does Transparency Work? The Challenges of Measurement and Effectiveness in Resource-Rich Countries," *Yale Journal of International Affairs*, Spring/Summer 2011, http://yalejournal.org/wpcontent/uploads/2011/09/4.Articles_GilliesHeuty.pdf

15    Ibid.

16    Ibid.

trigger for national debates about the use of natural resources for pro-poor development and broader reforms. To reflect these perceptions, the paper therefore treats the changes mentioned here as a consequence, albeit indirect, of EITI and/or the public discourse about its benefits.

## Assessing EITI's Track Record:
### Positive Outcomes Raising Hope

One of the greatest successes of EITI is that through its multi-stakeholder approach, it has enabled governments, companies, and civil society - that would not otherwise be sitting or

**Figure 1** **The impacts of transparency on the political economy of decision-making in resource-rich countries.**
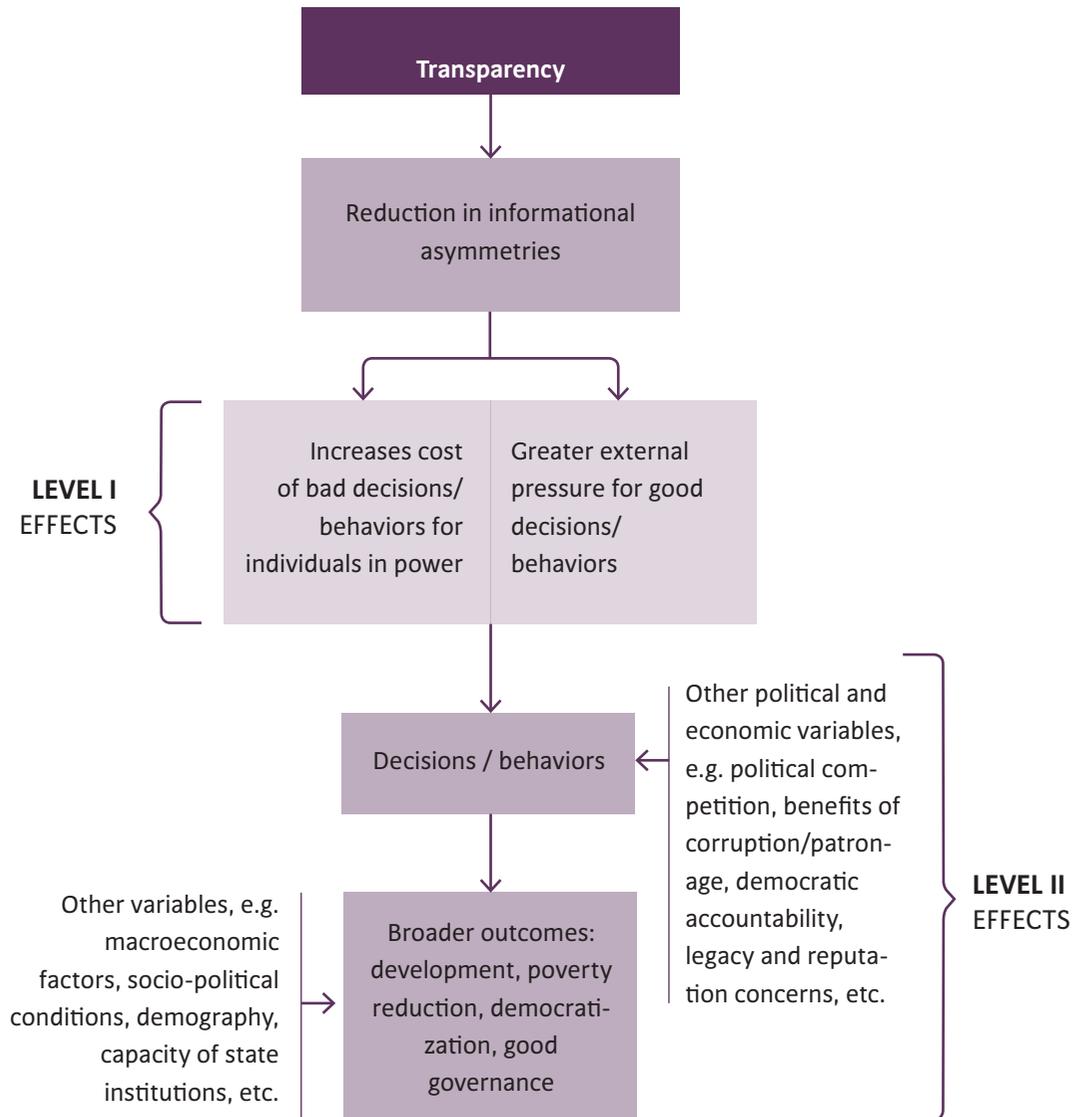


Source: Gillies and Heuty, 2011.

want to sit around the same table - to debate on matters of public interest. Although this approach offers the promise of benefits for each of the abovementioned stakeholder groups, EITI's "win-win" model presents governments and citizens of resource-rich countries as its primary beneficiaries.

There is, in effect, enough evidence to suggest that African citizens have benefited greatly from the initiative, notably through civil society's participation in the EITI process and the embrace of the oil revenue transparency agenda in general. For example, citizens have benefited from the increased availability in the public domain of EI data, which was previously considered to be a matter of national security in some contexts. However, it is clear that this information would not be meaningful without the support of African civil society. Indeed, ever since the inception of the debate and implementation of EITI in Cameroon and Congo-Brazzaville, organizations such as RELUFA and RPDH have been monitoring and evaluating EITI reports; disseminating information about these as well as general information about natural resources - mostly through posters,[17] drama, roadshows -; and organizing awareness campaigns in order to mobilize the public to demand accountability. The African media is also increasingly showing a keen interest in issues related to extractive industries, even though coverage of such matters tends to be irregular, sometimes biased, and the jargon used often too technical for the "man on the street."[18]

These activities have contributed to create more awareness around extractive industries and strengthen the voice of civil society. They have also enhanced civil society's legitimacy among the populace and its reputation vis-à-vis its EITI "partners" - especially in places like Ghana where decisions at the national steering committee are reached by consensus and not by voting;[19] or in Chad where they are elected following several consultative meetings of the CSOs[20].

## EITI: A Platform for Broader Reforms?

EITI promoters claim that EITI can serve as a platform for broader governance reforms. Interestingly, some African civil society activists agree. A Congolese activist noted for instance, that:

"… This democratization of information on income is leading to more accountability from the government vis-à-vis citizens. It is true that accountability is not yet radical, in the sense that the government has put in place some mechanisms to show that it governs in an effective manner (…). However, there is still a way to go, because these structures do not yet have the independence and efficiency needed to establish effective accountability (…) All things considered, the critical mass of data available in the public domain in Congo, through initiatives such as EITI, should allow elected officials to demand accountability. Moreover, the freedom of speech of citizens, who no longer hesitate to speak publicly, reminds us of the appropriation of this topic by a great number."[21]

There is also a sense that the effect of EITI goes beyond EITI implementing countries. This is certainly the view of a number of Angolan and international activists, who believe that

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17   RELUFA's poster on how much Cameroon gains from its natural resources can be found at http://www.relufa.org/partners/jhnewsletter/documents/BDRELUFAA4ANGLAIS-LIGHT.pdf

18   J. C. Canonge, M. Purcell and M. Behrman, Watchdog or Lapdog: Limits of African Media Coverage of the Extractive Sector, School of International and Public Affairs, Columbia University, 2010, http://ke.kcsis.org/watchdog-or-lapdog-limits-of-african-media-coverage-of-the-extractive-sector-report/  See also Jaff Bamendjo, "Triggering the Local Media in Covering Oil and Mining Issues in Cameroon," RELUFA Newsletter, Fourteenth Edition, September 2010, http://www.relufa.org/partners/jhnewsletter/archives/cameroon14.htm

19   The IDL Group and Synergie, "Validation of the Extractive Industries Transparency Initiative in Ghana," Final Report, http://eiti.org/files/Ghana_Validation_Reports_ENG_0.pdf

20   Misereor, Global Policy Forum Europe and Brot für die Welt, "Transparency: An Initial Step Toward Justice" An Interim Balance of the Extractive Industries Transparency Initiative (EITI) in the Central African Region, 2011, http://www.cidse.org/content/publications/business-a-human-rights/country-by-country-reporting/transparency_initial_step_towards_resource_justice.html

21   Communication with the author, August 31, 2012; author's translation.

the debate on the potential benefits of joining the EITI for Angola, and the international transparency campaign in general, is in part behind the increase of transparency in public financial management in the country.[22]

## Challenges... But the Tide is Turning

As expected, EITI's stakeholders have had different expectations of the MSI, and often divergent - normative and material - interests influenced by their own "sector-specific rationales."[23] Unfortunately, these self-interest motives turned out to be much stronger than the common goal pursued through the EITI process, and subsequently led to detrimental unintended consequences. Oft-cited challenges of EITI include civil society's reliance on governments' publication of information and/or funding,[24] and these governments' attempts to use EITI as a tool for reconfiguring "the constellation of social forces in the very communities which they initially seek to represent and include."[25]

Incidentally, therefore, at the same time that it appears to be reinforcing power asymmetries that analysts say lead to rent-seeking and other patterns identified in the "resource curse" literature, EITI is seen to improve the international relations of many implementing states, even those that merely pay lip service to it. As a direct result of their implementing EITI, these countries are able to gain access to international finance - in the form of foreign aid or direct investment, tax income and lower borrowing costs or debt relief - and shore up their and their leaders' international reputation. The same is true of EI companies, consumer states and international donors whose reputation have equally been protected and even enhanced, despite the fact that their support for the MSI has often been ambiguous and/or inconsistent.

> *It is young people who are leading anti-government and anti-corruption protests across Africa. And their voices are definitely not to be undermined*

The abovementioned dynamics gave rise to a sense that "none of these key players has had an overriding interest in changing the way things are"[26] and a sense that EITI is still an elitist agenda, detached from citizens. The "civil society" that participates in the EITI process includes mostly organizations linked to the Publish What You Pay (PWYP) Coalition, almost all of which are located in capitals or big cities, while actors with critical voices and a greater understanding of issues that matter to citizens, including trade unions and grassroots organizations, are excluded and pushed to find new avenues to express themselves and put across their grievances.

Perhaps it is not surprising that the "second degree" of the international campaign to build transparency and accountability in the EI - that focuses on "publish where you spend and how you spent the money"[27] - in the sub-region has come from this latter set of actors. One notes

22   Author's interviews with several Angolan and international NGO officials, and analysts.

23   A. Peters, T. Forster and L. Koechlin, "Towards Non-State Actors as Effective, Legitimate, and Accountable Standard Setters" in Anne Peters, Till Forster, Lucy Koechlin and Fenner Zinkernagel (eds.) Non-State Actors as Standards Setters, Cambridge: Cambridge University Press, 2009.

24   See, for example, S.A. Aaronson and J. Brinkerhoff, "Limited Partnership: Business, Government, Civil Society (NGOs) and the Public in the Extractive Industry Transparency Initiative (EITI)," George Washington University, October 2009, http://elliott.gwu.edu/~iiep/assets/docs/papers/Aaronson_IIEPWP2010-28.pdf

25   S. Bracking, "Hiding Conflict Over Industry Returns: A Stakeholder Analysis of the Extractive Industries Transparency Initiative" BWPI Working Paper 91, 2009.

26   Interviews with former EITI Board member, 26 April 2010, and NGO Official, 18, August 2010. See also M. Abutudu and G. Dauda, "Natural Resource Governance and EITI Implementation in Nigeria," Nordiska Afrikainstitutet, Uppsala 2011.

27   Words of an Angolan NGO official interviewed on August 4, 2010.

the work done by Dynamique Citoyenne and CANADEL, two Cameroonian NGOs and non-members of PWYP, on budget transparency[28]; and the activism of oil and gas workers from Nigeria, in trying to keep oil companies honest about production quotas.[29] In fact, across the sub-continent, through art, music and street demonstrations, young people along with other social groups, have taken it upon themselves to ask difficult questions about the use of public resources and the levels of unemployment while politicians "fill the streets with Prados"[30].

{ *Enabling citizens to use its global platform in order to speak for themselves on issues that matter to them through the medium they feel most comfortable with* }

This citizen-led activism is witnessed elsewhere in Africa, including in some of the unexpected places like Egypt, Libya and Angola, whose case is as insightful as the two previous ones. Once considered a poster child of the resource curse and a "state without citizens"[31] - because of the effect of tight presidential control on the political system and the exercise of citizenship rights -, Angola has indeed been "changing with the times"[32], in the most dramatic way. Reputational concerns, economic interests and the need to gain legitimacy

among its people led the Angolan government to provide some degree of transparency into its earnings from the oil sector, and gradually allow for the political opening up and participation of civil society. However, these improvements did very little to fill the big gap between the poor section of society which makes up the majority of the Angolan population; and the rich one, made up of a small number of political and economic elites that have ruled the country ever since its independence in 1975. If anything, by increasing public scrutiny, they threw open more windows for Angolans to be willing to, and actively take part in, the process of change in their country. The resulting outcome was the mushrooming of individual and youth-led initiatives which, it should be said, was facilitated among other factors, by the spread of information communication technologies and lately, influenced by the Arab uprisings.

One such initiative that is gaining prominence is Maka Angola, an online-based anti-corruption utility set up and spearheaded by the Angolan award-winning journalist and human rights defender Rafael Marques. It "collects and investigates complaints by Angolan citizens regarding acts of corruption."[33]More recently, one of its investigations - later taken on by the Financial Times - led to the US investigation into corruption allegations surrounding Cobalt International Energy's oil dealings in Angola and a case lodged before Angola's Supreme Court.[34] As for the disenchanted youth, it has used, amid violent government crackdown, street protests, music - rap in particular - and the internet to speak about issues that matter to ordinary Angolans: from high levels of youth unemployment, corruption and mismanagement, government demolitions of set-

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28    D. Halleson, Amplifying Citizens' Voices: The Role of Civil Society in Promoting Accountability and Transparency in Cameroon's Contract Regime', in A New Role for Citizens in Public Procurement, a Transparencia Mexicana Initiative, 2012.

29    See Abutudu and Dauda, above n26.

30    Retrieved from *Lettre au President*, a song by the Cameroonian Rapper nicknamed "Valsero".

31    All Party Parliamentary Group on Angola, Observations and Recommendations on a Visit to Angola, September 2006, http://www.chathamhouse.org/sites/default/files/public/Research/Africa/appgangola0906.pdf

32    A. Vines, "Angola Changing with the Times," IPRIS Lusophone Countries Bulletin, April 2010.

33    http://makaangola.org/?lang=en

34    See R. Marques, "The Angolan Presidency: The Epicentre of Corruption", August 8, 2010, http://makaangola.org/wp-content/uploads/2012/01/PresidencyCorruption.pdf; Tom Burgis and Cynthia O'Murchu, "Spotlight Falls on Cobalt's Angola Partner," April 15, 2012, http://www.ft.com/cms/s/0/1225e3de-854d-11e1-a394-00144feab49a.html#axzz2JDcbB073; Rafael Marques, "Manuel Vicente and Kopelipa in Trouble with Justice," January 6, 2012, http://makaangola.org/2012/01/06/manuel-vicente-e-kopelipa-a-contas-com-a-justica/?lang=en

tlements without compensation, to elections fraud.[35] Websites like Eleições Angola (Angola Elections)[36] and Central 7311[37] were created to serve these purposes.  A great deal still remains to be done in building transparency and accountability in Angola. However, there is no doubt that by gradually gaining legitimacy,[38] this citizens' movement is putting pressure on the ruling elite and re-shaping the nature of citizens' engagement in the management of state affairs.

## EITI: Taking Clues from the Current Citizens-Led Anti-Corruption Movement?

The paper sought to examine EITI's track record in sub-Saharan Africa. It showed how through the MSI, African civil society has had a say in the management of the natural resources of their countries. It also explained that the EITI platform is seen in certain corners, as the trigger for advances in transparency in affiliated and non-affiliated states. Lastly, although it is difficult to establish a clear causal chain between these transparency improvements and accountability, the paper has sought to convey the belief of various civil society actors interviewed, that citizens have used the opening of the public sphere, pushed through in part by discussions of EITI implementation in their countries, to impact other public policy decisions.

Yet, one of the key issues that remain to be solved is that of citizens' engagement in the MSI. This is the case not least because after an initial period during which its participation was allowed, civil society is now trapped in a conflict between its own interests, and those of powerful vested interests which managed to a certain extent, to appropriate the standard and tame its effectiveness. The corollary is that rather than empowering the watchdogs, EITI has mostly empowered those who are supposed to be watched. There is a danger that the aforementioned dynamic might render the MSI ineffective and reverse the gains made during its early years. To prevent this from happening, the main question is not so much how EITI can give its figures a "human face"[39] but rather, how it can give *itself* a human face. Responding to the former, Katende proposes the creation of another mechanism that would compensate for the fact that the validation process is not effective in this regard.[40] This mechanism, he adds, should enable the evaluation of the impact of EITI on living conditions; and at the national level, the assessment of whether money derived from the EI sector is invested in priority social sectors. [41]

The argument here is that the EITI could be improved in order to deliver on its original promise of bringing about transformational social change - in other words, that the starting point should be to revisit EITI, not replace it -; but that in order to achieve this, it needs to learn from the current wave of popular uprisings. In Africa, in addition to context-specific elements, this movement is influenced by the rise of mobile phones usage, of the middle class that plays an important role in helping to drive cultural progress, and by demography.[42] It is young people who are leading anti-government and anti-corruption protests across

35    See L. Ahrens, "Angola's Critical Rappers Remain Defiantly Vocal as Elections Draw Near," July 31, 2012, http://www.thisisafrica.me/music/detail/19545/Angola%E2%80%99s-critical-rappers-remain-defiantly-vocal-as-elections-draw-near. "MCK," "Ikonoklasta" and "Carbono" are some of Angola's most famous protest rappers.

36    http://eleicoesangola2012.com/

37    http://centralangola7311.net/about/

38    In a film about the youth movement, one protest rapper is seen talking about the movement gaining legitimacy, referring to the fact that less than two years after the first demonstration was called in March 2011, they had received financial and other support from anonymous supporters from within the political circle. Author's interview with D, January 17, 2013. The film, Angola: Birth of a Movement, is available from http://www.aljazeera.com/programmes/activate/2012/10/20121014131143923717.html

39    Quoted in J.C. Katende, above n13.

40    J.C. Katende, above n13.

41    J.C. Katende, above n13.

42    L. Rakotomalala and B. Parrella, "Introduction," in African Voices of Hope and Change, 2012 Citizen Media Coverage from the Global Voices Community, Global Voices Books, December 2012, http://books.globalvoicesonline.org/wp-content/uploads/2012/12/AfricanVoices_En.pdf

Africa. And their voices are definitely not to be undermined, for they constitute more than 20 percent of the overall African population[43]. In Angola alone, more than half of the country's population is under the age of 20, and according to Ana de Sousa, this "burgeoning youth have neither the fear of their parents, nor their allegiance to the party that brought independence to Angola."[44]

The key for EITI in the coming years will be how to build on this phenomenon: how can it move from promoting its brand and what it represents for states and companies, to creating a bridge between itself and this segment of the population that will shape Africa's future; or better still, to enabling citizens to use its global platform in order to speak for themselves on issues that matter to them through the medium they feel most comfortable with. Its sustainability depends on it.

EITI is evolving, as the revision of the 2011 rules show. The recent public video competition[45] launched by the International Secretariat further indicates that it has taken notice of recent trends. The hope is that rather than being a stand-alone project, it becomes the launch pad for more initiatives aimed specifically at empowering ordinary citizens. Only this way can EITI become a truly global "multi-stakeholder" initiative.

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43 United Nations Economic Commission for Africa and the United Nations Programme on Youth, "Regional Overview: Youth in Africa," 2011, http://social.un.org/youthyear/docs/Regional%20Overview%20Youth%20in%20Africa.pdf

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## Interviews and Communications

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- Interview with NGO Official, August 18, 2010.

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- Interview with Journalist D., January 17, 2013.

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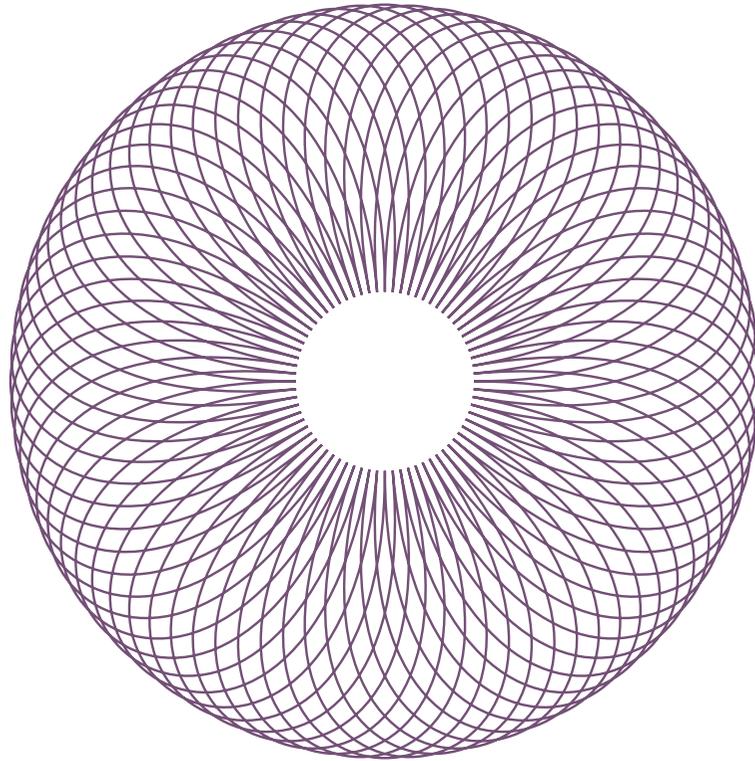
# Fighting Economic Crimes and Regulated Self-Regulation

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ABSTRACT

The recognition of legal entities has been an important step in the development of many countries. Since the middle of the 19th century, when economic markets and the emergence of companies had gained momentum as a result of the industrial revolution, legal systems have dealt with the problem of how these entities should be treated when its members infringe legal regulations. This question becomes particularly significant for society when members commit crimes. The most important type of legal entities are companies, which will be analyzed in the following article. The accounting scandals within Enron and Worldcom in the US, the case of financial fraud within Parmalat in Italy, or the corruption cases within Siemens in Germany have been vivid examples of the scope and the severe consequences corporate wrongdoing can have on direct stakeholders and the overall market. In a liberal society, and especially in a free market economy, the freedom of conducting business without state interference is a critical element of the system. Yet the mere scope of the aforementioned cases calls for an adequate response by society and its legal systems. The following article takes a comparative view of existing national and international solutions to corporate criminal liability and their problems, and develops a comprehensive approach, which emphasizes the preventive potential of a modern sanctioning system.

## The Traditional Approach: Regulation and Self-Regulation

Traditionally the legal systems answer to corporate wrongdoing has been to provide for a double sanctioning mechanism. On the one hand, the acting member of the legal entity is punished, in many cases criminal sanctions apply and the number of such sanctions has increased substantively in the last decade. On the other hand, the company itself is held responsible and the question, if the sanction is a criminal one, differs widely among nations. Most common law countries have integrated the responsibility of companies into their criminal system. In contrast civil law countries, especially German speaking ones, have opposed a criminal solution for dogmatic reasons and instead referred to administrative fines for a long time. But within the last 20 years many countries have introduced a system of corporate criminal liability. For example, in Switzerland since 2003, companies are held responsible if no member can be prosecuted or if the company has not prevented a crime by due care. In Austria since 2006 companies are criminally liable if a senior manager commits a crime or if the company has not prevented the crime of a low level employee by due care. These changes show that even "restrictive" systems, which had heavily opposed the concept of corporate criminal responsibility for decades now have opened the door for prosecuting companies. The development has been accompanied by vibrant discussions at an international level. International instruments often do not explicitly require states to provide for a criminal sanction for companies, but they always oblige states to introduce effective and dissuasive sanctions. This requirement can be best met, if states implement a criminal regulation holding companies liable. In addition to these criminal sanctions legal systems often provide for a wide variety of administrative measures that secures companies' adherence to the law. These measures mostly apply to specific markets like the banking sector, or to certain issues such as the protection of the environment.

These criminal and non-criminal regulations by the state are accompanied by companies' self-regulation measures. With the development of the business ethics movement, especially in the US in the 1980s, the prevention of legal infringements within companies through internal mechanisms became popular. Many companies drew up a code of ethics or a code of conduct instructing their employees to act legally and ethically. The subsequent compliance movement, which became widely known when the US introduced their federal corporate sentencing guidelines for criminal offenses in 1991, further enhanced such efforts to prevent and detect crimes. The idea was rapidly taken up by other countries and has now spread across the world. Many companies, especially big publicly traded ones, often have an elaborate compliance system. At present there are two main systems, public and private, which both deal with the same concept: the adherence to legal rules within companies.

## Problems

Although classic regulation in the field of corporate criminal liability and self-regulation are widespread measures, they are not particularly successful in preventing corporate crime. The reasons are plentiful, but are essentially due to structural deficits. Classic regulations for corporate criminal liabilities mainly concentrate on the acting employee and make the company responsible for these acts. This construction is illustratively called "vicarious liability" in the US. It is the basis of corporate liability in international treaties, with the idea

being that the company will take up measures in order to influence its employees as the company cannot avoid liability. The law trusts in a rational reaction of companies, but essentially leaves them to regulate themselves, and the multitude of problems this brings: as the law does not clearly take up and foster preventive measures. The corporate setting and its (decisive) influence on the acting employee is neglected and this means that the main characteristic of actions in companies, the corporate climate and its impact on the behavior of employees, is not taken into account (see below).

Additionally, sanctions for companies are mainly monetary. These sanctions can be substantive such as in the antitrust legislation of the European Union, or in general concerning crimes in the federal system in the US. But these sanctions are not aimed at eliminating the corporate failure that led to the infringement of the law and have, besides a slight and often disputed deterrent effect, no preventive influence. Moreover, criminal proceedings in many countries place strong emphasis on the aspect of cooperation of the company to ease investigations. The aim is often to strike a deal with the company and it gets a reduced fine for "good" cooperation. This approach fosters a climate whereby a company does nothing until an incident is taken up by the authorities, but then puts all efforts into a kind of "super-cooperation." Such short-term measures cannot foster a long-term legal climate and structure within a company.

Self-regulation on the other hand has its clear limits. Although business ethics are widely promoted and one can assume that many managers are willing to act ethically, such efforts are often not effective. Ethics are not only made for fine weather days, but particularly must be applied and enforced in times of conflict. And in such cases monetary interests of the company often prevail, good will, legal and ethical rules are then set aside. This is especially true in companies where ownership and control are separate and the management does not have to fear for their personal property, the classical principal-agent-problem already brought up by Berle and Means in the 1930s. Having experienced the consequences of the financial crisis for a few years the shareholder value-idea, which regards the ultimate measure of a company's success as the extent to which it enriches shareholders, might not be officially proclaimed anymore, but it has not disappeared in practice. To date neither classic regulative approaches nor self-regulation by the companies are really effective in preventing crimes.

> *Neither self-regulation nor classic regulation effectively prevent crime*

## The Specifics of the Corporate setting

Before dealing with the question of how a more effective approach can be reached, one has to make clear what the specifics of illegal acts within companies are. There are two that make a difference to individuals: power and the corporate climate. Companies are an agglomerate of goods and people. This gives them not only monetary power, but especially because of their often specialized and highly qualified personnel, far reaching possibilities to influence the markets, the media, public discussion and often even politics and law-making.

The main characteristic of a company is still the corporate climate. This has particularly come to light in the last two decades and is also the result of the business ethic development that attracted attention to the attitudes of employees and the influences on their behavior. Social sciences, especially the works by Luhmann, have shown that a company is a system of its own. It exists besides other systems, and most relevant in this context, be-

{ *Regulated self-regulation allows the state to "pierce the corporate veil"* }

sides the legal system. Companies have their own rules and procedures. Teubner names it "law without state." The existence of a separate system has the consequence that group dynamic processes can develop independently from other systems. Group dynamics are the result of the interaction of several people and result in the creation of a certain group will and this leads to a specific corporate climate. Organizational psychology and criminological research show that such a climate can be maintained for a long period of time, is experienced by the individual members of the organization and can greatly influence personal behavior.

The climate can have a positive as well as a negative influence on the members of the organization. If the values and rules are the same as in the legal system, the corporate climate supports members acting legally. If not, if making a profit explicitly or - more common unspoken and subtle - is seen as the main (and maybe only) value, the climate erodes the legal thinking and actions of the members. If such an erosion of values goes hand in hand with corporate powers the risk of breaking the law and severe consequences as a result is high.

## Combining Self-Regulation and Regulation

As companies are separate systems of their own, the legal system cannot easily influence internal behavior, the concept of classic criminal regulation is too short-sighted. Its approach "do that/do not do that or you will be punished" does not reach the internal level and

the corporate climate of the company. As it is often stated, these types of regulations do not "pierce the corporate veil." This is not a problem when the company and the legal system go hand in hand, but it becomes a problem when companies develop rules contrary to the legal system. A solution to this problem could be combining classic regulation and self-regulation, what will be referred to here as "regulated self-regulation." This approach does not abstain from state regulation. It includes self-regulatory measures into an overall regulative concept of steering and stimulating corporate behavior, while still leaving companies flexibility to implement and individually adjust measures. In this concept the state imposes the fundamental framework whereas the companies are responsible for regulating the details. It requires companies to actively do something for the prevention of legal infringements especially of crimes, but does not go into detail how to do it in order not to impair their business.

The aim of the approach is the creation or maintenance of a good corporate climate. It wants to make use of the "good" dynamics within the closed social system of a company. This requires determining how such a good corporate climate can be achieved. At this point the compliance development of the last decades, especially in the US is of great importance. Compliance simply means the adherence to (legal) regulations. The relevant aspect of this development is the so called compliance program, which comprises all the measures to secure adherence to these regulations. A comprehensive and systematic compliance program is an effective tool to prevent and detect legal infringements within companies. If a company is structured top to bottom, in accordance with effective compliance measures, empirical evidence shows that this minimizes chances to commit crimes and maximizes incentives to follow legal rules. This article will not examine the necessary components for a "perfect" compliance program in detail, but will highlight some of the important elements of it. It is not merely a paper program with a written code of conduct, which is the main difference to the business ethics movements of the 1980s, in-

stead is a companywide system that influences the complete operational and organizational structure. It is also closely connected to ethical thinking, which is integrated into everyday work and must be lived especially by the management. The control and supervision of top managers must also be paid special attention to, as they not only make far reaching decisions for the company, but influence lower level employees substantively.

The compliance approach is a suitable means of regulated self-regulation as it allows the state to set a framework for company structures, which is deemed necessary for a good corporate climate, but does not have to prescribe the measures in detail for the companies. This makes it manageable (and cost efficient) for the state, and leaves room for companies and their individual business, risks, size and corporate structure. The question as to how exactly the state could implement such an approach is laid out in the section below.

## Levels of Regulation

The legislator could implement the approach of regulated self-regulation in private law, administrative law or the law of public sanctions. Yet private law only offers a low level of possibilities to steer company behavior. It leaves too many aspects to the discretion of the parties and is in general, especially the law of torts, money-oriented. On the other hand an implementation in administrative law leads to strong state influence, as regulation would be directly addressed to all companies and there must be state authority responsible for controlling these companies. Therefore, private and administrative law can have only a supportive function in an overall regulative approach.

The best place to regulate is the law of sanctions as an indirect implementation system: although it addresses all companies its rules only become relevant if there is suspicion of an infringement. The allocation of public resources is more efficient and state interference with companies' rights is lower than in the case of administrative regulations. Moreover, it offers the possibility to steer company behavior

by motivation, if incentives for implementing measures are included into the concept.

Five levels of state action may be distinguished, which vary in the influence of the state on companies and the degree of regulation:

- Informal support by the state
- Honoring compliance
- Sanctioning the lack of compliance
- Excluding responsibility
- General obligation to implement compliance-programs

### Informal support by the state

The first level is informal support of the state for a good corporate climate. This includes motivating the self-regulation of companies and more importantly of company associations for setting up best practice standards, such as in the banking sector. It also includes motivating private institutions to make a good corporate structure a precondition for business. The requirements of some stock markets for being a publicly listed company are an example for such a measure. Yet state authorities can be of an even greater help. They can advise companies on programs or set up model compliance programs. Such compliance assistance is, for example, given by the US Environmental Protection Agency. In this case the specific knowledge of administrative authorities is used without making them a formal and binding instrument in law enforcement, as it normally the case in administrative law. Such advice should not be underestimated as many companies are willing to take steps to improve their regulation but do not know how.

### Honoring compliance

At a second level the state could honor good compliance and thereby motivate companies to take up measures. This is the best possibility in the law of sanctions. A main incentive could be if authorities can retain from initiating proceedings or can close proceedings because compliance measures show that the company had done what it could in avoiding

the illegal act of a member of the company. As it is never possible to completely avoid any illegal acts within a company one has to evaluate if the company had taken reasonable steps from the point of view before the act (ex-ante approach). In the US the United States Attorneys' Manual[1] offers federal prosecutors such a possibility for the dismissal of charges (although almost always the company has to accept some conditions of probation). Yet it is important that unlike in the US the co-operation policy of public authorities, (which expects companies "willingly" to cooperate to a large extent and gives great credit for doing so) does not undermine long-term compliance efforts, because compliance is valued and credited much less than cooperation.

> *A multi-level approach is needed for successfully preventing corporate crime*

Additionally compliance can be important at the sentencing stage. Here Chapter 8 of the Federal Sentencing Guidelines[2] in the US is an example: an effective compliance program can reduce a fine. If a sanction requires looking at the corporate climate in which the act of a member took place, it is possible to take into account how much the climate contributed to the act, and how strong measures to prevent such an act had been. The sanctioning authority should have sufficient discretion to take the scope and the effectiveness of the measures into account. The

sentencing guidelines only grant a reduction if a comprehensive and effective program exists. This is too inflexible and reduces the incentive for companies substantively to take up at least some measures. Besides the law of sanctions, an implementation in administrative law is also possible especially by reducing public supervision. An example could be to extend the term of public controls from two to four years if an effective compliance program exists.

## Sanctioning the lack of compliance

On the third level the state can sanction the lack of compliance. When determining a sanction the lack of compliance measures can be regarded as an aggravating factor under certain circumstances. This should be the case if compliance measures are merely undertaken for giving the company the look of a good corporate citizen, but in practice are not effective and merely window dressing. It is also possible where the company does not take concrete action, though there exist obvious risks of law breaking. Such regulations would clearly send the message that neither misleading measures, nor the acceptance of too risky business is tolerated. The lack of compliance can also be sanctioned by a specific compliance-sentence. Such a sentence would comprise the obligation to implement certain compliance measures or a comprehensive compliance program. For example the American Federal Sentencing Guidelines provide for such a sentence, also federal prosecution in the US often makes the implementation or improvement of a compliance program a condition of probation. This allows the sanctioning authority directly to influence the corporate structure and address the deficiencies that led to the illegal act of the member of the company. It would also enable to really resocialize the company, something that is much more difficult to achieve when the accused is an individual (and where the "nothing works" attitude is much more prevalent). The threat of such a sanction for structural reforms would be a great incentive for companies to

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1   United States Department of Justice, United States Attorneys' Manual (USAM), Title 9, Chapter 28; accessible online under http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/28mcrm.htm

2   United States Sentencing Commission, 2012 USSC Guidelines Manual, Chapter 8, § 8 C 2.5; accessible online under http://www.ussc.gov/Guidelines

take up efficient compliance measures. It offers a much greater incentive than existing monetary sanctions and gives the state great power to do something effective against corporate crime.

### Excluding responsibility

On a fourth level the state can provide for regulation, which excludes corporate responsibility if efficient compliance measures are taken. The exclusion of liability is the ultimate incentive for companies. Such regulations have become increasingly popular in recent years. The UK Bribery Act 2010, the UK Corporate Manslaughter and Corporate Homicide Act 2007 or the Italian legislation on corporate criminal liability (Decreto Legislativo no. 231 of 2001) have taken such an approach. This kind of regulation is not only a strong incentive, but it is also fair, as it only holds the company responsible where the corporate climate has contributed to the offense (the entity can be literally called "guilty"). In all other cases the individual might be punished and the company might be held responsible under a strict liability regime for civil damages - as these rules are based on another rationale than the sanctioning systems with their emphasis on social blame -, but not for being accused of having contributed to an offense. Such an approach is not limited to the law of public sanctions but can also be implemented in private law (e.g. the law of torts) or in administrative law (especially in cases where the company has to supervise certain acts). Of course the exclusion of liability is only possible where the compliance measures meets maximum standards, a concept that in practice is difficult to achieve. Insofar as this kind of regulation can only be taken in addition to the previous mentioned steps in order to offer also incentives for measures below this high standard.

### General obligation to implement compliance-programs

The fifth level finally would be to provide for a general obligation to implement compli-ance-programs accompanied by a sanction in case of insufficient implementation. This would be a very strong regulative approach. Whereas such a broad general obligation does not seem to exist at the present, sector obligations are partly common. For example the German securities trading act requires financial institutions to set up compliance measures for the prevention of insider trading and punishes non-implementation with an administrative fine. A general obligation does not seem warranted as it would substantially interfere with companies' constitutional rights (freedom of business), beyond a reasonable level. Such measures should only be taken in areas where the legislator deems it necessary for effectively regulating the sector. This could be the case when the aforementioned measures do not provide enough incentives for legal behavior or the protected legal goods in question make special measures necessary.

## Conclusion

The article highlights that the state has a variety of measures it must carry out in order to steer company behavior and influence internal structures. Current national legislation in many countries does not yet make use of these possibilities. In order to effectively motivate company behavior the respective legislator should develop a coherent and comprehensive system that puts more emphasis on prevention than in the past. At the center of this concept should be a corporate sanctioning regime that provides incentives for companies on the level of responsibility, sanctions and proceedings. These measures should built on one another and should be accompanied by single rules in private law, that would involve a control by private parties, as well as by rules in administrative law, especially for promoting informal help by specialized authorities. Such an integrated public-private approach can help substantially fostering a legal environment within companies and reduce social harmful acts like corruption and other crimes.

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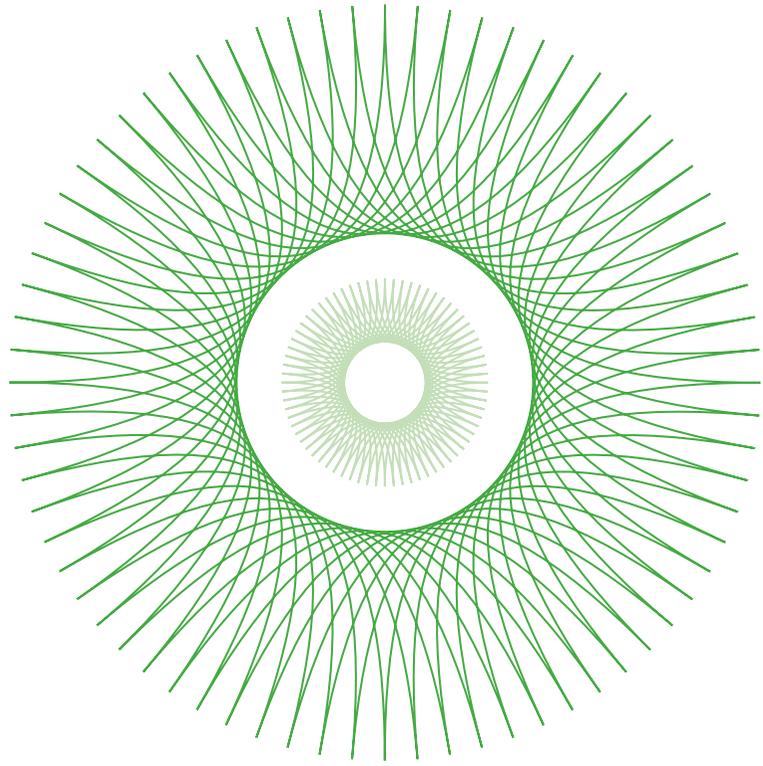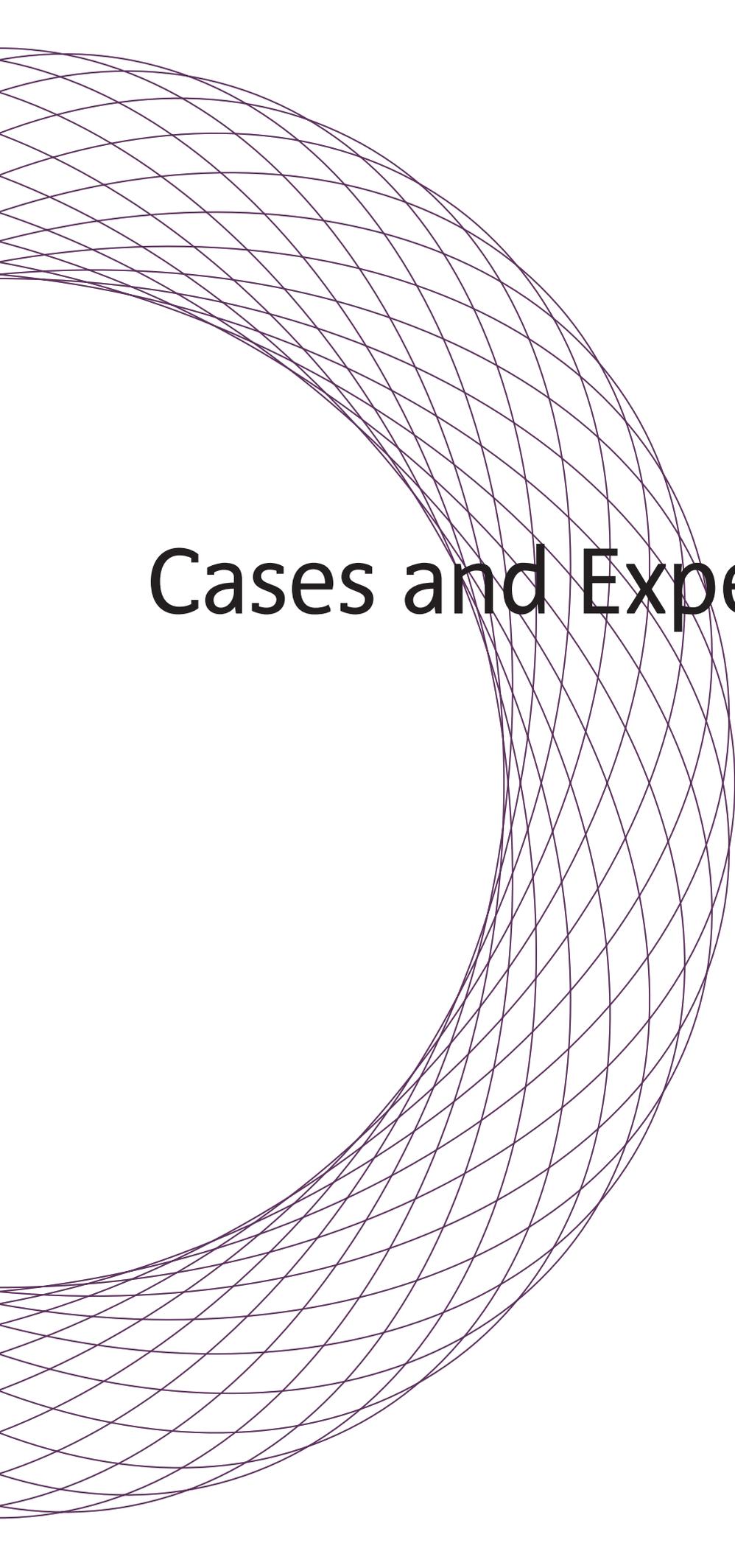
# Cases and Experiences

# Evaluation of the E-Procurement System in Turkey with Special Emphasis on Transparency and Accountability

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ABSTRACT

This article examines and explains the nature of the new electronic public procurement system, "e-Procurement" in Turkey. In particular, this article discusses how the system fares in terms of transparency and accountability. The article evaluates how e-Procurement fits in with the overall government reform in Turkey and then compares the transparency and accountability of the Turkish system to e-Procurement systems in other countries. The article compares the benefits and risks of the old and the new procurement systems in Turkey and examines the quality and the quantity of the data being shared with the public/citizens/stakeholders. The article concludes with the future plans to increase accountability and transparency via e-Procurement in Turkey.

Transparency and accountability are among the most important principles for public procurement procedures. The logic is simple: in public procurement, public money (tax payers' money) is spent for the public through the intermediary of agents, who are generally politicians and civil servants. This procedure should be transparent. Each tax payer should know who is buying what, when, at which price, from whom and for what purpose. Moreover, every civil servant should be accountable for procurement conducted under their scrutiny.

In recent years, electronic public procurement systems, or "e-Procurement," have been embraced as a primary tool to make public procurement procedures more transparent, effective, efficient, timely and accountable. These systems have been established in numerous countries in the past decade such as *Portal de Compras do Governo Federal* (Federal Government Procurement Portal, or "Compras-Net") in Brazil, *Korea On-Line e-Procurement System* (KONEPS) in South Korea and *Government eMarketplace* in the UK. Turkey has been among those countries that have embraced e-Procurement as a means to enhance transparency and accountability.

According to the statistics of the Public Procurement Authority (PPA) - the agency responsible for regulating and supervising public procurement in Turkey - public procurement was approximately 92bn Turkish Lira (approximately US$50 bn) in 2011.[1] This is more than seven percent of the national GDP.[2] Establishing transpar-

ency and accountability in such a big portion of the economy through e-Procurement has been a crucial goal of the government. As such, the Electronic Public Procurement Platform (EPPP) was established by the PPA and became operational on September 1, 2010.

This paper will address various aspects of the new e-Procurement system in Turkey with a specific focus on transparency and accountability. The motives behind the establishment of the system, its currents status and applications, the type of data and information available in the system that make it more transparent, the means by which it makes users more accountable, the benefits observed thus far, and its comparison to the old system and various e-Procurement systems in the world will all be explained. Based on the current status of the system, several suggestions towards further transparency and accountability are presented.

## E-Procurement within the Overall Government Reform in Turkey

The Turkish government foresaw the opportunities provided by information and communication technologies (ICTs) to render public services efficiently and effectively. As such, in 2006, the government developed and enforced the Information Society Strategy (2006-2010). "An electronic environment for public procurement" was identified in this strategy as one of the targets for modernizing public administration, with a specific goal of 90 percent of public procurement procedures carried out electronically. The PPA was selected as the responsible agency to achieve this target.[3]

In November 2008, the Public Procurement Law (PPL) was amended to implement and regulate e-Procurement. This amendment established the PPA as the responsible authority for the EPPP. In 2009, the e-Government advisory group of the Prime Minister's Office determined 11 high-priority e-Government projects, which included e-Procurement along with others, such

1   Public Procurement Authority, "Public Procurement Monitoring Report, 2011," March 2012, http://www.kik.gov.tr/ihale_istatistikleri-45-1.html

2   Turkish Statistics Institution, "Expenditures on GDP at Current Prices, 2011," April 2, 2012, http://www.tuik.gov.tr/VeriBilgi.do?alt_id=57

3   State Planning Organization, "Information Society Strategy (2006-2010)", July 2006, Ankara, Turkey.

> *In recent years, "e-Procurement," have been embraced as a primary tool to make public procurement procedures more transparent, effective, efficient, timely and accountable*

as the electronic searching of judicial records by individuals, online applications to register firms and online tax collection by local government authorities. In the 2009 and 2010 annual government programs, which specify economic and social targets of government for the year, the "development of an electronic public procurement system"[4] and the "operation and extension of the applications provided within the EPPP"[5] were assigned as responsibilities of the PPA, respectively. The National Strategy to Enhance Transparency and Fight Corruption (2010-2014), which was approved by the Council of Ministers on February 1, 2010, included the review of the public procurement system, taking into account opportunities via e-Government applications, as a key priority area.[6]

With clear government support, the PPA began the technical and administrative work towards the design, development, testing and establishment of the EPPP in May 2009. In February 2010, the EPPP was opened to register contracting entities and economic operators.[7] At this stage only the registration process was handled in the EPPP. The EPPP call center was launched at the same time to provide user support, while the 1.0 version of the EPPP was launched in September 2010. Through this version, contracting entities could prepare and publish tender documents and notices online, and make records of procurement procedures such as tenderers, tender prices, and contract award information. In December 2010, the 1.1 version of the EPPP made it possible to make inquiries from the databases of related government agencies for qualifications of economic operators, such as tax debts and social security premiums due. In March 2011, the 1.2 version of

the EPPP made it possible to submit and evaluate the tenders through the EPPP in the pilot sector of medical devices. These procedures are all regulated by two main PPA regulations: "Electronic Procurement Application Regulation" dated 25/02/2011 and "Communique No. 1 on the use of the Electronic Public Procurement Platform" dated 17/12/2010.[8]

## Transparency and Accountability of the New E-Procurement System

The EPPP boasts many new features that make procurement more transparent and officials more accountable. These features can be summarized as follows:[9]

- Economic operators and citizens can download and view tender documents free of charge on the EPPP. This makes it possible to detect potential anti-competitive clauses such as describing a specific brand in technical specifications.
- Economic operators and citizens can view tender notices free of charge on the EPPP. This makes it possible to monitor procurement opportunities. The EPPP automatically sends tender notices to registered economic operators in the relevant sector.
- Economic operators and citizens can search for tenders according to a number of criterion, such as sector, deadline, contracting entity, tender location, type of tender and type of procedure.

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4 State Planning Organization, "Annual Government Program of the Year 2009", October 2008, Ankara, Turkey.

5 State Planning Organization, "Annual Government Program of the Year 2010", October 2009, Ankara, Turkey.

6 Official Journal, "The National Strategy to Enhance Transparency and Fight against Corruption (2010-2014)", 22 February 2010, Ankara, Turkey.

7 The term "economic operators" is a specific term used in the European public procurement directives 2004/17/EC and 2004/18/EC to define real/legal persons who are potential or active tenderers. In this article this term will be used to define potential or active tenderers.

8 Public Procurement Authority, "Public Procurement Regulations," http://www1.ihale.gov.tr/mevzuat

9 These features are described in detail in the "Communiqué No 1 about the use of the EPPP."

- According to the PPL, tenderers have to buy tender documents from the contracting entity before submission of a bid, to make sure that they are well informed about evaluation criteria and contract clauses. Contracting entities log the trade names of economic operators who bought tender documents and submit tenders. This makes it possible to see contract participation behaviors of economic operators and detect any attempts of collusion. For example, if two companies continuously share different lots of tenders it can be detected.
- Contracting entities log the names of tender commission members. This makes it possible to identify the individuals responsible for a specific tender.
- Economic operators and citizens can see contract award notices on the EPPP and in the free daily Public Procurement Bulletin. This makes it possible to monitor who has been awarded the contract, by whom, and at what price.
- Economic operators and citizens can see all publicly available information about a tender under a single page entitled "Tender at a Glance."

In addition to these features, the EPPP database is integrated with those of several related public agencies, in order to share their public information about tenders. For example, the Competition Authority can search for tender related information from the EPPP database to check for any systematic attempts of collusion, while the Social Security Agency can search for contract award information to ensure contractor personnel are registered in their system.

## Publicly Available Information Provided in the EPPP

Perhaps the most critical issue for making an e-Procurement system more transparent and thus increasing accountability is making information about procurement publicly available and easily accessible. As indicated in the table below, publicly available information within the EPPP is classified according to phases of the procurement process:

### Table 1 Publicly Available Information within the EPPP[10]

| TYPE OF INFORMATION | DETAILS OF INFORMATION | PHASE AT WHICH IT IS AVAILABLE |
|---|---|---|
| Tender Notice | Date, time, location of tender, requirements to submit tender, tender evaluation criteria | After the notice is published in the Public Procurement Bulletin, seven to 40 days before the tender submission due date (based on its estimated value) |
| Tender Document | Administrative and technical specifications, draft contracts, projects, addendums | After the notice is published in the Public Procurement Bulletin |
| Contract Award Notice | Value of the contract, trade name of contractor, estimated value of the tender, duration of the contract, number of tender documents purchased, tenders submitted, valid tenders | After the contract award notice is published in the Public Procurement Bulletin |
| Complaints Delivered to the PPA for Review of the Tender Process | Trade name of applicant, time of application, subject of complaint, time of application, decision of the PPA after its review | After the application is made to the PPA. For the PPA's decisions, five days after decision is submitted to the contracting entity and the applicant according to the PPL. |
| Public Procurement Reports | Cumulative statistical figures in detail such as the total value of public procurement, the number of tenders, top procuring entities in terms of value and number, contract value/estimated value ratios | Every three months |

10   Public Procurement Authority, "2011 Annual Report," pp. 54-64, April 2012, Ankara, Turkey.

## Comparison of the Old and New Systems of E-Procurement Procedures in Turkey

Before the launching of the EPPP in September 2010, the PPA used a different electronic system called the "Public Procurement Platform", which had been operational since late 2005. These two platforms are compared based on the functionalities in the table below.

Table 2 illustrates the major differences between the old and new systems and demonstrates the advantages of the latter. In terms of transparency, the availability of tender documents online and the description of the good or service needed make it easier to understand what the contracting entity intends to purchase and under what conditions. In terms of accountability, tender evaluation records, even though not publicly available yet, make it possible for competent authorities such as the PPA while reviewing tenders to see whose tender is evaluated, by whom and how. Moreover, contract award notices include further information that was not previously available as specified in Table 2.

**Table 2: Comparison of the Public Procurement Platform and the EPPP**

| FEATURE | PUBLIC PROCUREMENT PLATFORM (OLD SYSTEM) | EPPP (NEW SYSTEM) |
|---|---|---|
| Description of the good or service needed | The needed goods, services and works were not described and classified according to different sectors. | A report is prepared to describe the goods, services or works to be procured and it is classified according to the Common Procurement Vocabulary (CPV) codes.[11] |
| Tender document preparation | Tender documents could not be prepared on the platform. | Tender documents are prepared on the platform using a wizard controlling the clauses in the documents according to regulations. Thus errors and unjustified qualification criteria are minimized. |
| Tender notice preparation and publication | Tender notices were prepared and published online. However, information was not retrieved from the tender document. | Tender notices are automatically prepared in a separate module based on information provided in the tender document and published online in the Electronic Public Procurement Bulletin. This approach prevents inconsistencies between tender documents and notices. |
| Online tender document acquisition | Tender documents could not be acquired from the platform. Economic operators had to visit the contracting entity and pay a fee to acquire the document. | Economic operators registered in the EPPP can acquire tender documents free of charge. |
| Electronic tender preparation and submission | Tenders were prepared and submitted via hard copy. | Even though not in practical use yet, tenders can be technically prepared and submitted on the EPPP. This functionality will be available in early 2013 in the pilot sector of medical devices. |
| Tender Evaluation Records | Tender evaluation records were not taken. Tender evaluations of contracting entities were not recorded in the system. | Contracting entities record tender evaluations, which make it possible for competent review authorities such as the PPA, to see who submitted a tender and the outcome of tender evaluation (economically most advantageous, valid or invalid tender). |
| Submission and publication of contract award information | Contract award information was submitted via the PPP and published in the Electronic Public Procurement Bulletin. | Contract award information is submitted online and published in the Public Procurement Bulletin. However contract award notices include more detailed information such as the number of economic operators who purchased the tender document, estimated value of the contract vs. actual contract value, duration of the contract and nationality of the contractor. |

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11   CPV is a reference nomenclature used to classify public contracts according to different sectors in the European Union.

**Table 3: Comparisons of the EPPP and Other Foreign E-Procurement Systems**

| | EPPP | KONEPS[12] | GOVERNMENT EMARKETPLACE[13] |
|---|---|---|---|
| Scope | All central and local government agencies and publicly owned enterprises | All central and local government agencies | All central and local government agencies |
| Obligation to use | Mandatory for all government agencies and publicly owned enterprises | Mandatory for central government agencies and for local government agencies above a certain threshold | Mandatory for central government agencies only for commonly needed goods and services |
| Tender notices | Available | Available | Available |
| Tender documents | Available | Available | Available |
| Contract award notices | Available | Available | Available |
| Search option for tenders | Available | Available | Available |
| Cumulative public procurement reports | Available | Available | Available for procurement activities conducted by the Government Procurement Service |

## Comparison of the EPPP and Other Foreign E-Procurement Systems

The table three above compares the EPPP with South Korea's KONEPS and the UK's Government eMarketplace, in terms of various transparency and accountability.

This table illustrates that all three e-Procurement systems promote transparency and accountability via online access to tender notices, contract award notices and tender documents. The major differences lie in the coverage and scope of the systems. While the EPPP covers all tenders, whether issued by central or local authorities, the other two systems mainly focus on the procurement of central government agencies. In addition, the use of the EPPP is mandatory for all tenders issued by central and local authorities, whereas KONEPS and Government eMarketplace is mandatory mostly for the central government agencies. The coverage and mandatory use of the EPPP make it possible to follow overall public procurement activity in Turkey from a single source, whereas in the UK, various other public procurement platforms exist. For example, according to statistics provided by officials of the Public Procurement Service of South Korea, 67 percent of public procurement processes were executed via KONEPS in 2011.[14] In the EPPP all tenders are registered, regardless of whether they are within the scope of the PPL or exempted from the PPL.

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12 Information about KONEPS from the website of the Public Procurement Service (PPS), http://www.pps.go.kr/english/, and presentations made by officials of the PPS at PPA's visit to PPS in April 2012

13 Information about Government eMarketplace from the website of the Government Procurement Service, http://gps.cabinetoffice.gov.uk/

14 This information is provided by officials of the PPS at PPA's visit to PPS in April 2012.

## Conclusion: Future Plans to Increase the Transparency and Accountability of the EPPP

Though the current version of the EPPP has many different aspects to ensure transparency and accountability, there are other major steps that need to be taken in order to increase these values in public procurement procedures. They can be summarized as follows:

- Although technically available in the EPPP and a pilot has been carried out, e-Tender submission and e-Tender evaluation are not currently open to use for contracting entities and economic operators in the system. The PPA has waited for maturity in the use of system and realized substantial increases in the number of economic operators registered in the EPPP. As of late 2012, the number of registered contracting entities exceeded 30,000. The PPA plans to make it possible to submit and evaluate tenders electronically on the EPPP in the pilot sector of medical devices by the early 2013. With electronic submission and evaluation, the human intervention in the tender process will be minimized. By integrating the EPPP with information systems of related government agencies and non-governmental organizations such as banks organizations (e.g. the balance sheet information sent from the system of the Revenue Administration), the EPPP makes it possible to search for economic and technical qualifications of potential suppliers directly from the source. Thus, the tender commission decisions will be justified according to official records, which will eliminate discretionary decisions and make commission members more accountable.

- The PPA intends to study the digitalization of procurement items in a way similar to European Article Number (EAN) bar codes.[15] The digitalization of procurement

items refers to allocating unique codes for all items procured to specify that particular item. As such, the same or similar items bought by different agencies can be easily compared in terms of price, quantity and other aspects. In other words, apples will be compared with apples. If a specific public entity buys a certain good at an abnormally higher price than another entity, it will be kept responsible and asked for explanation.

> *Higher awareness among the general public will undoubtedly enhance the transparency and accountability of the EPPP system*

- Currently there is a 40 MB size limit for uploading technical specifications. If the size of the document exceeds this amount, technical specifications cannot be uploaded by contracting entities. Hence, they cannot be downloaded and reviewed by economic operators on the EPPP. The PPA plans to increase this limit to 100 MB this year. Thus, the number of tenders for which all documents can be viewed and downloaded from the system will increase.

- The PPA intends to add a new functionality to the system, with the help of integration with the system of General Directorate of Population and Citizenship Affairs, to detect whether there are any close family relationships between commission members and owners of tenderer economic operators. This feature will make commission members more accountable.

- Though the EPPP is widely known among government agencies and economic operators working with government agencies, awareness amongst ordinary citizens about the EPPP and the information it provides

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15   EAN codes are 13 digit unique codes representing a specific product by scannable bars. For details visit http://www.officialeancode.com

could be greater. During the CEBIT Eurasia Information Technologies Summit, most of the domestic visitors who visited the stand of the EPPP were not aware of the functionalities provided by the system.[16] Moreover, some of them had never visited the EPPP's website. In order to increase awareness about the EPPP, the PPA should initiate publicity efforts such as press conferences and interviews in the national media to communicate the benefits of the EPPP for citizens. Higher awareness among the general public will undoubtedly enhance the transparency and accountability of the EPPP system. With its current status and its future prospects, the EPPP is and will be one of the invaluable parts of government reform in Turkey, in terms of increased transparency in and accountability of government operations.

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16    CEBIT Eurasia Information Technologies Summit is an annual event held in Istanbul, Turkey, bringing information and communication technology companies, consumers and government agencies together.  For details visit http://www.cebitbilisim.com/index.html
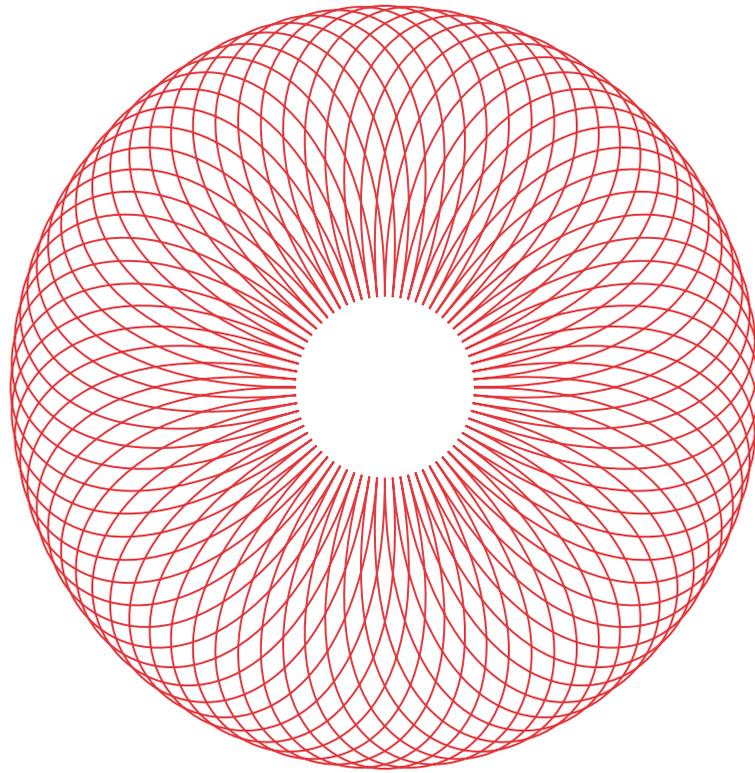
# Reciprocal Agreements for Watershed Services (ARA)
## An Innovative Approach for Watershed Management: A Case Study in Northern Peru

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A B S T R A C T

This article describes the implementation of the ARA+Pride methodology, which recognizes watershed services in four South American countries (Colombia, Peru, Ecuador and Bolivia). In this project 11 sites were trained to use the ARA+Pride methodology to establish local water funds, which are supported by local municipalities and water operators. The scheme was implemented on an incentive based compensation method to attract landowners to participate in the project and change their behavior surrounding watershed services. The ARA+Pride methodology is an innovative partnership system, which looks to tackle one of the most problematic issues of environmental conservation and water preservation. The approach takes a "bottom up" strategy, which includes the local community at every decision making process. This article discusses whether this unique multi stakeholder approach, which is considered one of the only viable ways of effectively tackling conservation issues and making them applicable to individual small scale landowners, is likely to be used in the future and spread beyond the 11 test cases that have so far been carried out in the Andean region.

**T**he world is facing a species extinction crisis as never before in human history. In South America, the Andes is one of the most biologically diverse regions on the planet[1] containing roughly one-sixth of all plant species in an area equivalent to less than 1% of the earth's surface. Compared with all other major biodiversity sites, the Andes has the highest concentrate of diversity and endemism of birds, with Colombia, Peru and Ecuador ranked first, second and fourth in the list of countries with the greatest number of bird species. Nearly 664 species of endemic amphibians are concentrated in this region and of these 450 are under threat, many of which can only be found in a limited number of regions.

Deforestation in the Andean region has increased significantly since the early 1970s, and is increasingly expanding and growing in intensity, mainly because of migration processes and the rapid development of rural areas. These processes involve changing trends in agriculture, livestock, road and highway construction and oil exploration. These activities generate pressure and threats to areas of high biodiversity and they are manifested in several forms; including loss of habitat by agricultural expansion and livestock grazing, burning, and logging for timber and firewood.[2] Additionally, though

to a lesser extent, widely scattered and numerous rural communities are exerting considerable pressure on the land through the activities they carry out on their land. However, it is these same communities that provide the best chance for achieving sustainable conservation in the long term. If the degradation of natural systems continues, rural Andean communities will be destroyed and will eventually lose the services provided by these ecosystems - along with their sources of natural resources -, which these communities rely on to sustain their development.

Most alternatives to deforestation, including forestry and exploitation of non-timber forest products, are of little value to owners or users of the resource. The few alternative products and services that are highly valued tend to have more of a collective benefit, rather than offering particular opportunities for individual owners or users. Examples of these "collective" benefits include soil erosion control structures/systems that control sediment movement, but this offers little benefit to the small landowner. Another example of a collective benefit of reforestation is that certain types of trees are able to stabilize soil, but while there are evident conservation values in such methods of reforestation, it offers little economic benefit to the individual landowner. However, an alternative to deforestation that does have a high value for owners and land users is watershed protection, which conserves natural ecosystems in order to ensure sustainable and good quality water resources. Ensuring that native vegetation is maintained in the upper watersheds to safeguard hydrological (water) services is an initiative that may be able to provide evident and tangible value for the local population and landowners. Furthermore, the watershed service provides great potential to deliver socio-economic benefits for the people of the Andean region.

Rare[3] is an international non-governmental organization (NGO) that trains local conservation leaders all over the world to change the way their communities relate to nature. Rare's

1    B.J. Best and M. Kessler, "Biodiversity and conservation in Tumbesian Ecuador and Peru. Cambridge," U.K, BirdLife International, 1995, and Conservation International, "Biological diversity in the Tropical Andes,"http://www.eoearth.org/article/Biological_diversity_in_the_Tropical_Andes

2    A. Etter, C. McAlpine, K. Wilson, S. Phinn, H. Possingham (2005).  Regional patterns of agricultural land use and deforestation in Colombia.  Agricultural Ecosystems and Environment 114 (2006) 369–386.

3    http://rareconservation.org

signature method is called a "Pride campaign" - so named because it inspires people to take pride in the species and habitats that make their communities unique, while also introducing practical alternatives to environmentally destructive practices. Pride campaigns are based on social marketing - the use of private sector marketing tactics to "sell" social change. These tactics include audience segmentation; focus-group testing of highly targeted messages; use of multiple media vehicles and outlets to reinforce messages over a sustained period of time; and rigorous measurement of "product adoption" (i.e. new attitudes, behaviors, and sustainable alternatives).

Social marketing has been used for years to successfully confront issues such as smoking, HIV-AIDS,[4] and seatbelt use,[5] but to date it has not been fully utilized to tackle the issue of how to sustainably conserve biodiversity. While many organizations are using a top-down approach with regards to international regulations, corporate buying practices, and national systems of protected areas, Rare is focused on supporting that work from the bottom up. This means reaching millions of people who live in and around areas containing the highest levels of biodiversity. People whose day-to-day behaviors, livelihoods, and culture will greatly impact how well global conservation projects will be embraced and sustained at the local level. To date, Rare has run Pride campaigns in more than 50 countries and continues this work in four regions of the world: South America, Indonesia, China and Pacific Islands (English speaking countries).

Pride campaigns are implemented by training local organizations to use methods for social and behavioral change, and it relies on them to add an essential understanding of local culture and norms as they conduct all community outreach. Local implementing partners are critical to achieving and sustaining impact at the community level. Rare also partners with organizations at national and international lev-

*The ARA+Pride methodology is an innovative partnership system, which looks to tackle one of the most problematic issues of environmental conservation and water preservation*

els to ensure that local strategies are well-integrated with broader conservation priorities in the region.

Because conservation is much more than just knowledge, there have to be local participation incentives to make a change in behavior come about. To make this happen it is essential to break down the barriers that prevent the necessary behavior from being implemented and maintained. For this, Rare has partnered its signature strategy, Pride Campaigns with a technology called ARA "Acuerdos Recíprocos por el Agua" (Reciprocal Agreements for Water). This new strategy was tested in the Andes in 2010 and the results are presented below.

## Brief Description of the Approach

Rare Pride Campaigns (Pride) are social marketing initiatives that provide local communities with the necessary tools to mobilize and strengthen social norms to make conservation strategies, appropriate technology implementation and sustainable economic alternatives viable. Pride promotes solutions through powerful techniques of community involvement and communication. The effectiveness of the training model and Rare's work has been tested through the implementation of more than 150 campaigns in over 40 countries worldwide. A local leader, working for a local private or public organization leads each campaign with the support from Rare during the training, as well as the implementation process. These local leaders have used Pride campaigns to create new protected areas, secure improved man-

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4   http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1463924/

5   http://www.healthyohioprogram.org/resources/socialmarketing/socmarkintro.aspx

agement of nature reserves, reduce threats such as forest fires, illegal logging, overfishing and unsustainable agriculture; thereby protecting the habitat of many species on the brink of extinction.

In 2010, with funding from the Global Environmental Facility (GEF), private donors and the support from the United Nations Environment Program (UNEP), Rare identified 12 sites in the northern Andes (Colombia, Ecuador, Peru and Bolivia) that are important Andean global biodiversity sites (AZE[6] sites), as well as being key water supply sources for municipal and agricultural usage. In these basins, there is a basic recognition for the need of shared activities for local protection of water resources, often through some kind of reciprocity schemes between the local inhabitants of the upper and lower parts of the watershed, which is a cultural tradition within Andean communities.

The ARA+Pride approach is based on the precautionary principle as defined by the United Nations Environment Conference[7] and the search for shared benefits and responsibilities among people, where those downstream contribute by providing an incentive to upstream inhabitants in exchange for their commitment and action towards reducing the threat to their water sources. Although the logic behind this assumption is true, few watershed residents in or close to AZE sites have the conviction to participate in these local management initiatives, mainly because the social norms necessary for community mobilization and social support are not yet present at these sites.

Between 2010 and 2012 Rare, together with government agencies and local NGO's in Colombia (4), Ecuador (3), Peru (3) and Bolivia (1) implemented 11 such ARA+Pride approach at 11 AZE sites in the Andean region with the aim of establishing ARA schemes at each of these sites. Each partner worked to strengthen the capacities of local communities to recognize, validate, and contribute towards harvesting the benefits of their watershed services and conserving the biodiversity within. Each site developed its own Pride+ARA campaign locally, but following the same strategy and using a common protocol to measure impact, changes in knowledge, attitude, behavior, and habitat/species status as compared to control sites.

## Problem to solve

A key problem that was identified and needed to be addressed at the sites where the ARA+Pride approach was implemented was that downstream water users (municipal potable water, hydropower generation and agriculture use) were observing a deterioration in their water quality and in most cases a significant/observable reduction in water during the dry season. In all cases the upstream landowners/producers were cattle ranchers or agriculturalists. These stakeholders removed forest vegetation (cloud forest or alpine moor/paramo) for their land activities, which reduced the amount of area for infiltration and regulation of water to the soil and subsequently to the streams (water supply). Therefore, the only way to ensure water supplies were sustained over time was to reduce the threat of land use in the upstream areas. However, the downstream areas were also part of the problem because in most cases they were not prepared to financially contribute to tackle the upper watershed. ARA+Pride addressed both audiences and worked towards a solution by presenting and negotiating a "win-win" scenario whereby upstream landowners received benefits from conservation and the downstream users benefited from reliable water sources.

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6    AZE stands for Alliance for Zero Extinction. This is a group of NGO's that have come together to seek conservation of a critically endangered and highly rare species throughout the world that are also not, in general, captured in the protected areas system of countries. More information on this group can be found at their website: http://www.zeroextinction.org/

7    The precautionary principle in the context of environmental protection is essentially about the management of scientific risk.  It is a fundamental component of the concept of ecologically sustainable development (ESD) and has been defined in Principle 15 of the Rio Declaration (1992): Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

This project seeks to address conservation issues associated with endangered species and their habitats. Through the work already in progress, the project has ensured that communities and individuals on the ground are able to work directly in areas of conservation where many of these endangered species and habitats are located. Because conservation results need to happen at a local level, this project has been focusing on the work that needs to take place at the municipal stage. In all 11 cases this work garnered interest from the local authorities and the protection of critical habitat is being addressed as part of local priorities, not only because "others" say it is important. People locally are starting to see the benefit of getting involved in these activities and goals and, moreover, they are now making them their own.

Progress has been made towards establishing better practices of land management in two ARA+Pride project campaign sites in the riparian zones (Yanuncay and Chinchipe). These actions have created a sense of awareness for landowners to "respect" the areas close to river courses (riparian vegetation) by using the enticement of improved animal husbandry and the incentives provided by the water funds and campaigns activities. Because one of the largest hurdles to the continued implementation of this kind and other environmentally friendly practices by landowners is the sustainability of funds to carry out these activities, the creation of water funds in many of the campaigns is aiming create this component of sustainability, which in turn will reduce the pressure on these important ecosystems for endangered species.

The local water fund mechanism has been created in at least eight of the campaigns, which ensures to a certain degree the continuous funding for the maintenance and operation of the ARA contracts into the future and will provide such funding in the coming months and years. In the case of five of the sites the operation is fully underway, while others are still working out the details of how to report and manage the accounts in the fund.

# The Experience & Case Studies
## Actors

The project involved local stakeholders, in some sites this includes NGO groups, in others it is local water companies and/or municipal government entities/operations. Although the profile of the organizations that participated in the "cohort[8] of campaigns" was varied, they all implemented the same ARA+Pride approach. The strategic actors in all cases were the mayors of the municipalities, without them the projects would not have been able to move forward. In all cases (11 sites in 4 countries) these actors aligned with the approach and local water funds were created. The mayors were involved in the process from the initial stage when the social marketing campaign was launched. The sites are located in the countries outlined in the map below.



COLOMBIA
ECUADOR
PERU
BOLIVIA

**RARE SITES**
Colombia **> 4**
Ecuador **> 3**
Peru **> 3**
Bolivia **> 1**

Rare, 2010

8    Cohort is a description of the group that stems from the biological definition of a "generation" indicating same time of birth. Therefore cohort in this case refers to the group of campaigns that started their process of ARA+Pride together on the same date and place.

## State of progress

In all cases the solution (ARA+Pride) is supported locally and although not all of them have local water funds created, there are activities in process to establish the funds that are yet to be created. Each local municipality has developed a plan for the investment of these funds and is currently implementing it independently of Rare. In several cases signed ARA agreements/contracts between the "water fund" and upstream landowners have already been put in place, where the upstream landowners have accepted compensation (in the form of productivity inputs like technical assistance) for their commitment and changes to their original traditional land use practices or for leaving parts of their land (several

hectares) for forest/regeneration, or fencing of riparian areas to protect the ecosystem or to let it regenerate. This last element is important because the traditional practice is to allow cattle to graze all the way up to the stream bank, limiting growth of riparian vegetation or even eliminating it outright. It is important to note that in no case was compensation paid in the form of "cash" payments. Follow-up and monitoring of the activities will continue to happen locally and Rare will stay in touch with all the participants through the Alumni program Rare manages. Table 1 presents the results of this project showing hectares under ARA contract as well as the indirect impact of the implementation of the ARA+Pride approach:

| Campaign | During the campaign Till November 2011 | | | After the campaign From January 2012 to December 2012 | | | Total | | |
|---|---|---|---|---|---|---|---|---|---|
| | No. of contracts | ha under ARA | ha indirect impact | No. of contracts | ha under ARA | ha indirect impact | No. of contracts | ha under ARA | ha indirect impact |
| Proaves | 8 | 2,131 | 518 | | | | 8 | 2,131 | 518 |
| Natura Bolivia | 9 | 488 | 5,549 | 14 | 620 | | 23 | 1,108 | 5,549 |
| ETAPA | 5 | 506 | 6,090 | 1 | 14.8 | | 6 | 520.8 | 6,090 |
| IBC | 3 | 33 | 712 | | | | 3 | 33 | 712 |
| NCI | 2 | 15 | 5,175 | 3 | 3.5 | | 5 | 18.5 | 5,175 |
| Caritas | | | | 27 | 754 | 2,786 | 27 | 754 | 2,786 |
| Natura Colombia | | | | 4 | 13 | 33 | 4 | 13 | 33 |
| Corpoguavio | | | | | | 150+4 | | | 154 |
| Farallones de Cali | | | | 3 | 103 | | | 106 | |
| Apeco | | | | | | | | | |
| Arco Iris | | | | | | | | | |
| **TOTALS** | **27** | **3173** | **18044** | **49** | **1,405.3** | **2,973** | **76** | **4,681.3** | **21,017** |

As is shown in the table above, there are two different types of land effects from the application of the ARA+Pride process in the project. The first type is the land that is under direct ARA contract, which as listed in the table above totals over 4,000 hectares, where the land use patterns are changed to be used for more environmentally friendly activities plus activities that have enhanced the productivity of the lands for the landowners (increased milk production, better fertilization, etc.). The second type of land management that has been identified as a result of the project is what is called hectares under direct impact. In most cases where the project sites are located, they are adjacent or very close to protected areas where lands have been under the threat of both conversion and overuse for many years. This is mainly because these are large areas and the public administration in most cases has low budgets and limited resources related to the management needs. Therefore, by implementing the ARA+Pride method in areas adjoining protected areas where the landowners are using methods that are more friendly as well as obtaining more benefit from their own lands, the need to move into the areas designated for protection are relieved of pressure from land use change. This is especially true in Ecuador and Bolivia where very large protected areas are located around the project (Alto Amboro and Cajas). In total the project has estimated that there are about 18,000 hectares of protected land around the project sites.

## Added-value and cost effectiveness

A significant element of the ARA+Pride approach is the sustainability potential. Because the financial and technical resources to keep this solution working are locally maintained and the benefits are locally enjoyed, it has a good chance of being sustainable in the long-term. The creation of a mechanism (local water funds and ARA contracts) that generates funds locally and an investment plan for those funds generates a sense of ownership that is seldom seen in projects of this nature. Rare's approach

*This project seeks to address conservation issues associated with endangered species and their habitats*

is about building local capacity that remains at the project site/region, together with intensive mentoring and guidance ensuring that the project methods will stay in place over a long period of time.

One of the elements that has been developed as part of the project implementation is an institutional figure called the "Advisory Council". This is composed of members of different national governmental organizations of the four countries (Colombia, Ecuador, Peru & Bolivia). This body meets by teleconference three times per year and once a year in an in person meeting. This group has been and continues to participate enthusiastically and since Rare has started its next cohort of ARA+Pride campaigns, the plan is to continue to use this institutional arrangement that has proven to work well to keep governments informed of the progress of the projects. From this experience Rare has been able to secure two Memorandums of Understanding (MOU) with national organizations, SENAGUA (Water Ministry) in Ecuador and CONAFOR (Forestry Ministry) in Mexico. These agreements open up the possibilities for promoting ARA+Pride at national levels, increasing the network effects of the project into even more countries outside the Andean region.

During the implementation of the project, eight of 11 campaigns are on track to have a municipal funding source. Most significantly, five sites with no previous experience of watershed conservation incentive funds are expecting to receive municipal support. At the Proaves Roncesvalles site (Colombia), the municipality has earmarked several thousand US Dollars for the development and implementation of ARA pay-

ments through agreements with water companies and rice producing groups. The catalyzing effect of the ARA+Pride campaign on early local funding of the ARA methodology is the equivalent, in this case, of a half million dollar trust fund for biodiversity conservation at the site. Such types of municipal agreements are being discussed throughout the four countries.

{ *Because the financial and technical resources to keep this solution working are locally maintained and the benefits are locally enjoyed, it has a good chance of being sustainable in the long-term* }

It is now more likely that incentive schemes (such as ARA) will be adopted by at least 2 regional/provincial or national government institutions as a management goal for conservation, considering the effects observed by the Advisory Council, as well as through the interest sparked locally and regionally for ARA+Pride. The Ministry of Environment of Colombia has also sought support from Rare to help them incorporate ARA+Pride into their national PES system (legislation currently being revised) and the program for Payments for Ecosystem Services (PES) called Socio-Bosque, a project of the Ministry of Environment in Ecuador, is in the process of signing an agreement with Rare to promote ARA+Pride, potentially at a national scale. The acceptance of ARA as a conservation incentive scheme has so far been good among the local landholders; what remains now is to upscale this to empower the authorities.

In the Yanuncay site in Ecuador, Empresa Municipal de Telecomunicaciones, Agua Potable, Alcantarillado y Saneamiento de Cuenca (ETAPA), the local partner, is running training workshops on matters that are of direct interest to farmers, including experimental land plots for improved pasture to encourage farmers to embrace conservation efforts. These activities have been preparing and encourag-

ing farmers to adopt innovative approaches to land use management and create a suitable environment for the signature of water reciprocal agreements. Through these initial workshops, local communities have admitted that they have perceived a change in the approach to land management used by ETAPA. Among other things, communities mentioned that they no longer feel threatened from the possibility of being displaced from their land for benefit of the Cajas National Park, given that some land tenants have no property rights. Communities in this site are starting to see that ARA contracts may be an opportunity to clarify land property rights, diversify income through conservation compensations, and improve pastures that lead to higher returns.

## Implementation and replication potential

The implementation of the ARA+Pride approach in Latin America has attracted significant interest from local municipalities and local NGOs working with municipalities who have issues with water supply (quality and quantity) and little or no resources, human or otherwise, to do anything about watershed management. The other large audience it has attracted is the National Parks System of Colombia, Peru and Ecuador where many protected areas are in highlands where water is usually regulated/captured (cloud forest, paramo). They have found that by generating and communicating the connection between healthy forests and good water quality and quantity, local support from downstream users has been made possible.

Although the project has now been completed Rare has seen an increasing effort and interest in replicating the actions of the project in other areas. This is happening at the following sites: NCI - Ecuador, ETAPA - Ecuador, Caritas - Perú, Natura - Bolivia, Proaves - Colombia, Natura - Colombia, Corpoguavio - Colombia, Parque Farallones del Cali - Colombia. At all of these sites there is ongoing support of the management of the local water fund as well as campaign activities.

## Key lessons learned

Although the ARA+Pride approach has many possibilities in many contexts, it is not an all out solution to all watershed problems. Firstly, it is necessary to have some prior degree of established relationships with local authorities, so that the project does not have to start from scratch. It is also important to note that legally, the ARA+Pride approach is applicable in most Latin-American countries without having to change national legislation. In terms of resources to make this happen, a minimum of US$300,000 per site is necessary over a period of two years. Once this investment happens, the trained partner should be able to function on its own with very little in the way of outside investment.

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## Acknowledgements

# How Sustainability Partnerships Manage Complex Societal Issues:
## The Case of Child Labor in the Cocoa Sector

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A B S T R A C T

Partnerships for sustainable development are governance arrangements between governments, businesses, and non-governmental organizations (NGOS) that offer the potential to manage complex social and environmental problems. These arrangements induce new forms of societal coordination and incite positive transformation in production and consumption modes. This article analyzes evidence from the cocoa sector, showing that partnerships are innovative and proactive organizational arrangements, which engage in networks to increase their capacity to manage strategic sustainability issues. In particular, this research project draws on notions from Network Theory to illustrate how a number of partnerships, which seek to eradicate the use of child and forced labor in cocoa production, create networked structures in order to expand their capabilities, gain increased access to resources, carry out their activities more efficiently and enhance their profile.

In recent years, many initiatives for sustainable development have originated from coordinated activities, involving governments, businesses, and non-governmental organizations (NGOs). These pluralistic arrangements have become one of the preferred approaches to tackle social and environmental challenges, and are believed to be promising for coordinating societal change. While such partnerships exist in various sectors to address different kinds of issues, this article specifically studies sustainability partnerships in the field of agricultural commodities, with a particular focus on the cocoa sector.

Cocoa is an important commodity in terms of global trading and the source of livelihood for millions of farmers around the world. Over the past two decades, the cocoa sector has been affected by serious sustainability challenges, including plagues, diseases and environmental degradation, as well as the volatility of prices in the international market and the use of child and forced labor in cocoa production. These factors, together with the limited capacity of farmers to build profitable enterprises, and the increased demands on compliance with international food and safety requirements, have put cocoa producers in a vulnerable position. The abandonment of cocoa plantations, and their subsequent conversion to other land uses, poses a threat to biodiversity and the global supply of cocoa.

In light of this situation, companies, international organizations, aid agencies and NGOs have joined forces to increase the competitiveness of the cocoa sector, protect biodiversity and improve the livelihoods of smallholder farmers. This article addresses the concept of sustainability partnerships as innovative and proactive organizational arrangements, capable of strategically managing complex social and environmental issues. Furthermore, it investigates the extent to which these collaborative arrangements form networks in order to foster changes in modes of cocoa production.

The partnership phenomenon emerged with the appearance of what has been referred to as "the privatization of regulation." This concept describes the transfer of regulatory tasks from public actors, such as nation states and intergovernmental organizations, to non-state actors, like businesses and NGOs. Non-state actors have increasingly gained authority through the development of soft law in the forms of private codes of conduct, global standards and transnational policy communities, which complement formal law.[1] This development has been attributed to the decreasing capacity of the state to solve the multiple problems posed by global change.

In this context, partnerships have been defined as non-hierarchical, self-organizing and coordinating arrangements, in which actors from two or more spheres of society collaborate to manage a sustainability challenge, often by means of creating voluntary standards and using the market as a coordinating mechanism to realize their goals.[2] Some partnership formats include public-private alliances, business-NGO partnerships, roundtables, or multi-stakeholder initiatives (MSIs). These arrangements have previously been studied in terms of their architecture, management and effectiveness.[33] This article explores an ad-

1    D. Stone, "Global Public Policy, Transnational Policy Communities, and their Networks," The Policy Studies Journal 36(1), 19-38, 2008 http://wrap.warwick.ac.uk/1800/1/WRAP_Stone_Global_Agora__Transnational_Public_Policy_JPS.pdf

2    P. Glasbergen, F. Biernmann, and A.P.J Mol, "Partnerships, Governance and Sustainable Development. Reflections on Theory and Practice," Chelthenham, UK: Edward Elgar Publishing, 2007

3    See I. J. Visseren-Hamakers, B. Arts, and P. Glasbergen, "Partnerships in forest Governance," Global Environmental Change 17, 408-419, 2007; G. Schouten and P. Glasbergen, "Creating Legitimacy in Global Private Governance: The Case of the Roundtable on Sustainable Palm Oil," Ecological Economics 70(11) 1891-1899, 2007

ditional research perspective and conceptualizes partnerships as unitary arrangements, which establish links with other partnerships and hence display a networked structure. Networks have been found to be promising for sustainability because of their capacity to: (i) facilitate exchange, (ii) enable the mobilization of diverse resources, (iii) align the interests of different actors and (iv) increase political opportunities.[4]

To carry out the study for this article, we selected a representative sample of 18 partnerships active in the cocoa sector and analyzed corresponding reports, documents, websites and newsletters. We also conducted ten semistructured interviews with representatives from relevant organizations including industry, NGOs, government agencies, certifying organizations and producer associations, and attended the 17th World Cocoa Foundation (WCF) Partnership Meeting. To analyze our data, we developed a framework based on notions of Network Theory and used it to map linkages between partnerships, identify the formation of networks around specific issue-areas and shed light on the functions that such networks perform.

## Analytical Framework: Mapping Social Networks

Social Network Analysis (SNA) is a method used to structure and describe the relationships that link individuals, organizations and other social units, shedding light on the interdependencies, behaviors, exchanges and attitudes that shape social relations.[5] Social networks are made up of *nodes* - individuals or groups that belong to the network - and *links* - relationships and flows between the nodes. SNA focuses on multiple levels of analysis simultaneously, explaining how an individual unit is embedded in a network that is in turn, entrenched in another network and so on. This type of analysis moves beyond simple micro-macro reductionism, thus allowing for social structures to emerge.[6]

*Cocoa is an important commodity in terms of global trading and the source of livelihood for millions of farmers around the world*

In general, mapping social networks consists of graphically representing the relationship that exists between nodes. Mapping is used to identify power positions, informal relationships, and the nature and direction of flows. Here, we use an egocentric approach to map the cocoa partnership landscape. This approach tracks full networks beginning with focal nodes, which are those that sustain the highest number of links to other nodes and later the connections between all the nodes in the network is considered.

However, mapping and describing social networks is not as straightforward as one might initially think. Existing definitions of networks emphasize what they are, rather than what they do. To overcome this, some researchers suggest describing networks in terms of the functions they perform to avoid making prescriptive assumptions about them. In particular, Mendizabal[7] has suggested that networks can fulfill six, non-exclusive functions: **Filter**, deciding what information is worth paying attention to and organizing unmanageable amounts of information. **Amplify**, taking little

4  J. Bendell and A. Ellersiek, "Noble Networks? Advocacy for global justice and the 'Network Effect,'" Civil Society and Social Movements Programme, Paper Number 31, 2009 http://www.unrisd.org/unrisd/website/document.nsf/ab82a6805797760f80256b4f005da1ab/a93cf6eaa4edad27c125757d002931ba/$FILE/BenElle.pdf

5  J.A. O'Malley and P.V. Marsden, "The analysis of social networks," Health Service Outcomes Research Method 8, 222-69, 2008

6  R.A. Hanneman and M. Riddle, "Introduction to social network methods," University of California Riverside, USA, 2005 http://www.faculty.ucr.edu/~hanneman/nettext/

7  E. Mendizabal, "Understanding Networks: The Functions of Research Policy Networks," Overseas Development Institute, UK, 2007, http://www.odi.org.uk/resources/odi-publications/working-papers/271-understanding-networks-functions-research-policy-networks.pdf

known or little understood ideas and making them more widely understood. **Invest/provide**, giving members the resources they need to carry out their main activities. **Convene**, bringing together different actors or groups. **Community building**, promoting and sustaining the values and standards of the members of the network. And **facilitate**, helping members to carry out their activities more effectively.

Networks can also perform two supra-functions: **Agency role networks** are those charged by their members to become the main agents of change. Members provide the network with the resources to execute projects, run campaigns or influence policy processes on their behalf; while independently, they can continue to influence their own policy processes and carry out their own projects. In such networks, research and communications are well coordinated and highly centralized around one or a few members. **Support role networks** work in the opposite direction. The network itself is not the agent of change. Instead, it acts as a generator of new information and a broker of other people's information, providing its members with the resources they need to carry out their research and policy activities. It is possible for some networks to carry out both agency and support roles.

## Sustainability Partnerships in the Cocoa Sector

Partnerships began to appear in the cocoa sector as early as 20 years ago, with the objective of improving cocoa farming systems, developing more effective pest and disease control methods and maintaining price stability.[8] Sustainability was first mentioned in 2000 after the cocoa industry became the target of a number of high profile campaigns and media exposés showing children being trafficked to work under horrific conditions in cocoa plantations in West Africa. As a result, stakeholders "began to recognize that a truly sustainable cocoa supply would require coordinated efforts

of all interested parties."[9] Partnerships between businesses, NGOs and governments became perceived as a potential format to tackle the transparency challenges associated to the use of child and forced labor in cocoa production, while simultaneously addressing the staggering decline in the global supply of cocoa.[10] The alternative model of governance provided by such arrangements - with decisions made in a multi-actor context with private parties sharing the responsibility for solving public problems - brought new types of relationships and modes of coordination between public and private actors, both from producer and consumer countries.

The partnerships in our sample (see the Annex for a complete partnership description) address three main strategic issues: six partnerships work to eradicate child and forced labor in cocoa production, 12 partnerships provide agricultural training and extension services to cocoa farmers, and nine partnerships promote the adoption of international sustainability standards and certification schemes. While some partnerships address only one of these strategic issues, others address two or all of them. This points to overlaps in the partnership landscape in terms of: (i) different partnerships addressing the same issues and (ii) the same partnership addressing different issues (see Table 1).

## Characterization of the Child and Forced Labor Partnership Network

From the sample of partnerships analyzed in this study, six of them - Cadbury Cocoa Partnership, iMPACT, International Cocoa Initiative, Roundtable for a Sustainable Cocoa Economy, Sustainable

8    R. Gaarder and C. McCommon, "Hershey Foods, Cocoa, and Belize: A Collaborative Model for Third World Development," Public Administration and Development 10 (3), 343-60, 1990

9    H-Y. Shapiro and E. M. Rosenquist, "Public/Private Partnerships in Agroforestry: The example of working together to improve Cocoa Sustainability," Agroforestry Systems 61 (1), 453-62, 2004

10    N.A. Bosque-Perez, R. M. Dahlquist, M. P. Whelan, L. Winowiecki, B. Polidoro, S. Candela, C. A. Harvey, J. D. Wulfhorst, and P. A. McDaniel, "Improving Livelihoods in Biodiversity Conservation: A Case Study of Cacao Agroforestry Systems in Talamanca, Costa Rica," Biodiversity and Conservation 16 (8), 2311-33, 2007

**Table 1:** **Partnership sample and issue-areas addressed**

| No. | Name | Issue-areas addressed | | |
| --- | --- | --- | --- | --- |
| | | Child and forced labour | Agricultural training and extension services | Certification |
| 1 | ACCESSO | | X | |
| 2 | AMARTA (Agribusiness Market and Support Activity) project | | X | |
| 3 | Cacaonica | | | X |
| 4 | Cadbury Cocoa Partnership | X | X | X |
| 5 | Day Chocolate Company | | | X |
| 6 | FEATI (Farmers Empowerment through Agricultural Technology and Information) | | X | |
| 7 | Healthy Communities | | X | |
| 8 | IMPACT (Mars partnership for African Communities of Tomorrow) | X | X | X |
| 9 | International Cocoa Initiative (ICI) | X | | |
| 10 | Rainforest Alliance Certified Cocoa | | | X |
| 11 | Rapunzel | | | X |
| 12 | Roundtable for Sustainable Cocoa Economy (RSCE) | X | X | X |
| 13 | SUCCESS Alliance | | X | |
| 14 | Sustainable Cocoa for the Americas | | X | |
| 15 | Sustainable Tree Crops Program (STCP) | X | X | X |
| 16 | Upcocoa Project | | X | |
| 17 | UTZ Good Inside Cocoa Program | X | | X |
| 18 | West Africa Livelihoods Program | | X | |
| | **Total** | **6** | **12** | **9** |

Tree Crops Program and UTZ Good Inside Cocoa Program - work to eradicate the use of child and forced labor in cocoa production (see Table 1). Our study observes that these six partnerships do not operate in isolation; instead, they have established linkages among them, taking a coordinated approach to addressing the problem. Together, these six partnerships form what we call the *Child and Forced Labor Partnership Network* and constitute the focus of our analysis.

In 2000, the use of child and forced labor became a threat to the cocoa industry when media reports showed how widespread child slavery and trafficking was in cocoa plantations. In response, the American Senate granted the U.S Food and Drug Administration US$250,000 to develop a label to guarantee that no child or forced labor was used in the production of cocoa. The international cocoa industry opposed this measure and proposed to address the problem without legislation. Senators Harking and Engel negotiated a protocol with the cocoa industry to eliminate the worst forms of child and forced labor in co-

coa farms.[11] The Harking-Engel protocol, as it became known[12], is a voluntary public-private agreement that specifies a series of actions to be taken by the cocoa industry; most notably, the development of a certification system[13] and the creation of a joint foundation to oversee efforts, carry out projects and disseminate best practices. Consequently, the International Cocoa Initiative[14] was created as a multi-stakeholder partnership in 2002. Since then, the problem of child and forced labor in cocoa production has been systematically addressed by a number of partnerships between private and public organizations that act in coordination with the International Cocoa Initiative. As our analysis in the next paragraphs will show, this has resulted in the formation of a networked structure, which we characterize in terms of its linkages, structure, exchanges and overlaps.

## Type of Linkages: Formal or Membership

In this network, partnerships are linked to other partnerships either by formal association or through their membership. In the first case, some partnerships are formal partners of other initiatives; for instance, the Cadbury Cocoa Partnership, iMPACT, and Sustainable Tree Crops Program (STCP) are formal members of the International Cocoa Initiative (link represented by a full arrow in Figure 1). In the second case, partnerships are linked by shared membership, that is, by having a specific or-

ganization as member of several partnerships (link represented by a dashed arrow in Figure 1). For example, Mars Inc.[15] is a member of four partnerships (International Cocoa Initiative, iMPACT, Roundtable for a Sustainable Cocoa Economy, and UTZ Good Inside Cocoa Program),[16] while the German Ministry for International Development (GIZ) funds half of the partnerships (iMPACT, Roundtable for a Sustainable Cocoa Economy, and Sustainable Tree Crops Program) in the network.[17] Similarly, all the partnerships in this network are members of the Roundtable for a Sustainable Cocoa Economy,[18] a platform established in 2005 to build consensus on the concepts, criteria, indicators, and ways of achieving a sustainable global cocoa economy. In this network, the Roundtable for a Sustainable Cocoa Economy, the International Cocoa Initiative and the Sustainable Tree Crops Program act as convening hubs, bringing a variety of stakeholders together during meetings and conferences and distributing information among their members.

## Network Structure

With respect to structure, the network has a high degree of centrality[19] as it has two primary focal nodes. The International Cocoa Initiative (ICI) and the Roundtable for a Sustainable Cocoa Economy (RSCE) have the highest degree of centrality as they each sustain links to five other partnerships (see Figure 1). These central partnerships experience an advantageous position in the network because they have more ways to satisfy their needs and better access to the resources of the network as a whole, and

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11    See T. Salaam-Blyther, C. Hanrahan, and N. Cook. "Child labor in West Africa cocoa production: Issues and U.S. policy," Congressional Research Service, United States of America Congress, 2005.

12    The protocol is formally called "Protocol for the Growing and Processing of Cocoa Beans and Their Derivative Products In a Manner that Complies with ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor."

13    Certification is a procedure by which an independent body gives guarantee on the quality of the cocoa and the way in which it was grown, harvested, traded, and manufactured. It is one of the preferred approaches of partnerships to manage diverse sustainability issues.

14    International Cocoa Initiative, 2012, http://www.cocoainitiative.org

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15    Mars Inc., 2012, http://www.mars.com/global/brands/cocoa-sustainability-home.aspx

16    UTZ Certified, 2012, https://www.utzcertified.org/en/products/cocoa

17    GIZ, 2012, http://www.giz.de/Themen/en/dokumente/gtz2010-en-mars-impact.pdf

18    Roundtable for a Sustainable Cocoa Economy, 2009, http://www.roundtablecocoa.org

19    "Centrality" describes the location of nodes in relation to the center of action of the network and its "degree" is given by the number of links that focal nodes sustain with other nodes.

**Figure 1: Child and forced labor partnership network**



Formal linkage
-------- Membership linkage -------->

**k/info:** knowledge, information, expertise, best practice exchanges
**$:** financial exchange
**ic:** implementing capacity exchange
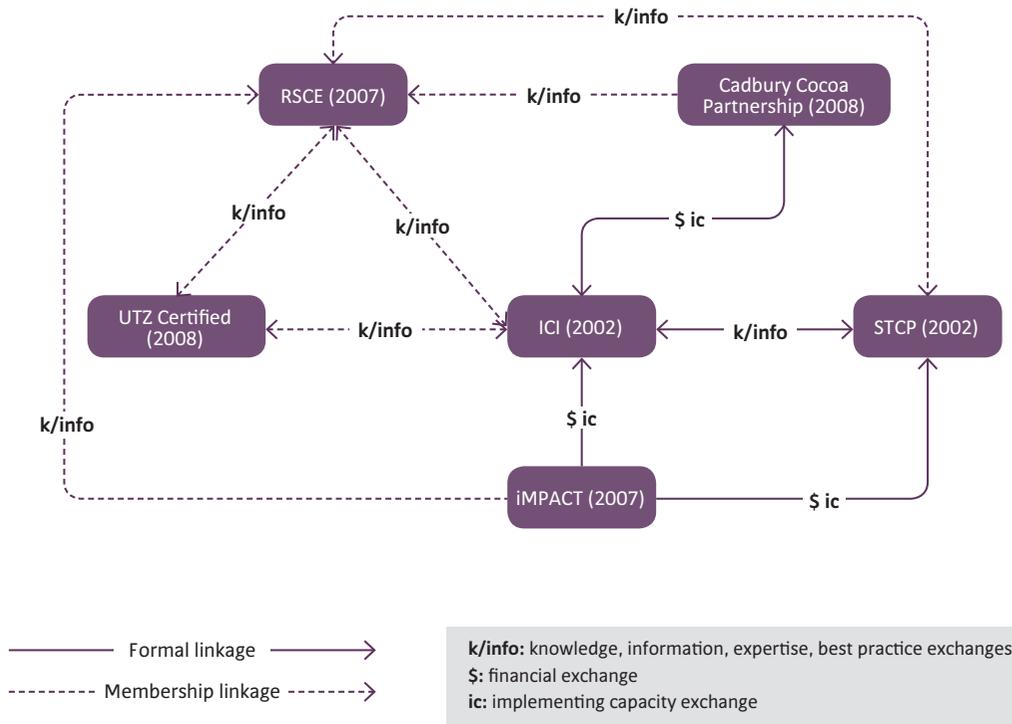
of other partnerships in particular. Often, these types of partnerships fulfill a broker role and manage exchanges among other partnerships.

## Nature of the Exchanges

The network is mostly dominated by financial, implementing capacity and knowledge exchanges (represented in Figure 1 by the symbols $, ic, and k/info, respectively). In this network, most of the flows of knowledge and expertise converge in the Roundtable for a Sustainable Cocoa Economy. Also, the International Cocoa Initiative and the Sustainable Tree Crops Program[20] have collaborated to expand

the curricula of the Farmer Field Schools[21] and integrate training concerning child labor, HIV/AIDS and education. In these "schools without walls," farmers learn about shade management, tree husbandry, post-harvesting, crop diversification, and certification. Regarding the financial and implementing capacity exchanges, the newer partnerships like iMPACT and the Cadbury Cocoa Partnership[22] - part of the corporate responsibility programs of Mars Inc. and Cadbury, respectively - provide financial resources and capacity to the International Cocoa Initiative and the Sustainable Tree Crops Program for the implementation of projects on their behalf.

20    S. J. Velarde and T. P. Tomich, "Sustainable Tree Crops Program in Africa," ASB-Partnership for the Tropical Forest Margins and Wolrd Agroforestry Centre, Kenya, 2006, http://www.asb.cgiar.org/pdfwebdocs/ASB-Impact-Cases-1-STCP.pdf

21    Farmer Field Schools (FFS) is a method introduced by the United Nations Food and Agriculture Organization (FAO) in Indonesia in 1989 to train farmers in a participatory manner.

22    Business Call to Action, 2012, http://www.businesscall-toaction.org/wp-content/files_mf/1286825168BCtACadburyCocoaPartnershipCaseStudy.10.10.2010ForWeb.pdf

## Network Overlaps with other Issues or Areas

In the third section of this article we discussed how some of the partnerships in our sample of 18 cases address more than one issue or area simultaneously (see Table 1). The overlaps occur because some of the partnerships that aim to eradicate child and forced labor in cocoa production, also provide agricultural training and promote the adoption of sustainability standards. This implies that a number of linkages between the network that we have studied

so far and the other partnerships in our sample exist (see Figure 2). For instance, partnerships such as the Success Alliance, Healthy Communities, Rapunzel, and Cacaonica take advantage of the Farmer Field Schools of the Sustainable Tree Crops Program to train farmers on cocoa renovation, pruning, quality control and complying with the requirements of standards such as Fairtrade, Organic, Rainforest Alliance, and UTZ Certified.  As the exchanges between partnerships and their members multiply, their relationships become increasingly complex and multi-layered.

**Figure 2: Network overlap**



Legend:
- Child labor partnerships
- Agricultural training partnerships
- Certification partnerships
- Partnerships addressing all issue-areas

Formal linkage →
Membership linkage ------→

**k/info:** knowledge, information, expertise, best practice exchanges
**$:** financial exchange
**ic:** implementing capacity exchange
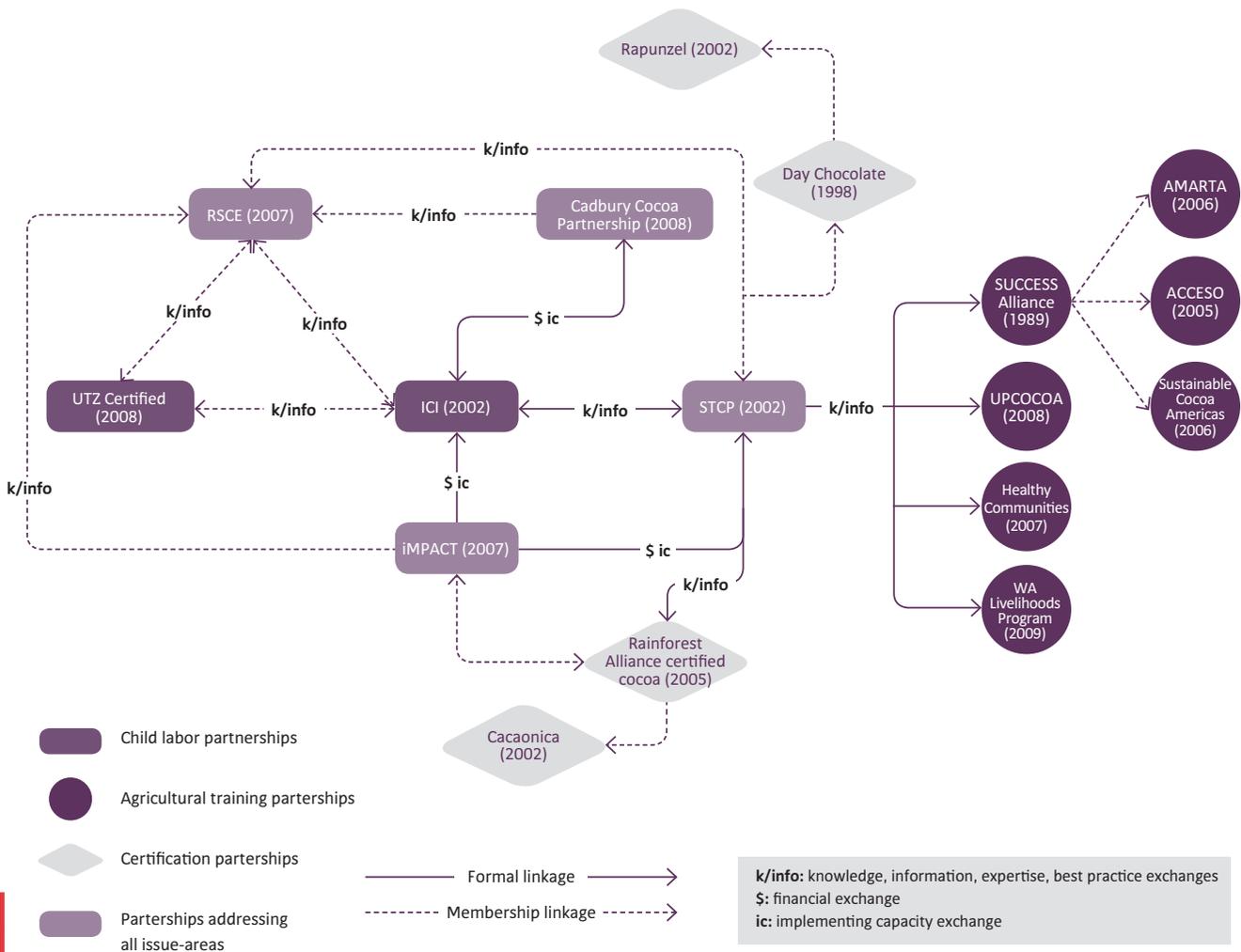
# Functional description of the partnership network

Networks are valuable for the many functions they can perform. And they can take on multiple forms depending on their internal and external environments. The child and forced labor partnership network, tries to influence policy and practice by fostering ties between research institutes, NGOs, and private companies; collaborating with governments; and providing platforms for coordinated action. In this regard, the network fulfills two functions - filtering and facilitating - and an agency supra-function.

## Filtering

This function has to do with the fact that child and forced labor are sensitive issues, which can be the subject of misinterpretation. Children found working on cocoa plantations might not necessarily be working under exploitative conditions, but as part of their responsibilities towards their family. The partnerships in this network work not only to eradicate the use of child labor, but also to clarify what defines exploitative child labor. As a central member of this network, the International Cocoa Initiative is responsible for establishing an accurate definition of the problem, as well as for providing different channels to address it and organizing information on the issue. This filtering function allows for other partnerships to deal with the issue of child and forced labor in a coordinated manner, rather than through isolated initiatives. For example, the education, sensitization, and community development project components of the Cadbury Cocoa Partnership, iMPACT, UTZ Certified, and the Roundtable for a Sustainable Cocoa Economy are largely based on the research and practice based evidence produced and distributed by the International Cocoa Initiative. Due to the centralized nature of the child and forced labor network, it is possible for the filtering function to be mostly carried out by one organization.

## Facilitating

Facilitating network functions are sometimes difficult to differentiate because these types of networks are largely created with that purpose. The facilitating function here refers to the actions of a network that are different to the actions of its members. Working in a networked structure enables partnerships to tackle the problem of child labor at different stages and scales; from the plantation, to the national and international levels; from the producers, to the processors and consumers. Eradicating the use of child and forced labor relies on a combination of policy, trade and practice measures. What this partnership network does is to facilitate a convergence between different approaches, ensuring that projects comply with the Harking-Engel protocol, the criteria of diverse private certification schemes and the corporate social responsibility requirements of large multinational firms.

## Agency Role

Networks that perform an agency role are charged by their members to pursue the changes they want to achieve and often centralize communications in one or a few members. The child and forced labor network centralizes much of its communications and capacity in the International Cocoa Initiative and the Sustainable Tree Crops Program, which also have the capacity to raise funds from industry members and international donors to invest in specific projects. Thanks to the agency role performed by the network, more organizations have included labor issues in their agendas, as has been the case with the certification program of the Rainforest Alliance. Also, as a consequence of their interaction with some partnerships, the governments of the Ivory Coast and Ghana are increasingly collaborating with the private sector on the development and implementation of their National Action Plans, encouraging the creation of reliable systems and improved public policy. In this respect, the roles of the Cadbury Cocoa Partnership, iMPACT, UTZ Certified, and the Sustainable Tree Crops Program are worth noting.

> *Partnerships in the cocoa sector display social networked structures, which often go unnoticed, as they remain largely intuitive and informal*

## Results and Conclusions

Partnerships have emerged as a new model of sustainability governance, both to compensate for government deficits, and to deal with the complexity of social and environmental problems. Previous studies have pointed towards the need for understanding partnership linkages, raising questions about interaction and competition among partnerships.[23] In this regard, our study has found that partnerships in the cocoa sector display social networked structures, which often go unnoticed, as they remain largely intuitive and informal. Based on our analysis, we suggest that partnerships engage in networks for four main reasons:

1. **To strategically manage issues:** Managing sustainability challenges often places individuals and organizations in problematic, contradictory and uncertain environments. To better cope with this, partnerships organize themselves around strategic issues and collaborate rather than compete with other partnerships to increase their technical and strategic capacity. Close interaction with partners and knowledge of "who knows what" and "who knows who" become critical resources to reduce the complexity of many sustainability challenges.
2. **To gain access to increased resources:** Sustainability partnerships are motivated to engage in networks to overcome their limited resources. Easier and faster access to a wide number of organizations provides partnerships with increased financial, technical and informational resources.

3. **To carry out their activities more efficiently:** The formation of networks increases coherence among partnerships working on the same issue-area(s). As partnerships operate in more systematized ways, using similar approaches and methodologies, they are able to maximize the impact of their interventions in a specific sector.
4. **To increase their visibility and profile:** Lesser-known or less-resourceful partnerships benefit from associating with high-profile organizations or partnerships that are able to generate greater media coverage and consumer attention.

The evidence of partnership interaction presented in this article shows that collaborative arrangements between businesses, governments, and NGOs do not operate in isolated environments, but are embedded within the multiple layers of social interaction that exist among people, organizations, partnerships and other networks. In fact, partnerships serve as additional vehicles to the already existing and continuously evolving organizational interactions, which vary in their degree of formality and their level of action, regarding the specific sustainability problem that they address.

In the particular challenge of eradicating child and forced labor in cocoa production, relying on partnerships to solve the problem poses some inherent limitations. In terms of their degree of formality, partnerships are time-bound efforts that depend on self-regulation and have so far only managed to secure marginal commitment from the cocoa industry. Regarding the level of action, partnerships under the Harking-Engel protocol have a narrow scope since they only address cocoa production in the Ivory Coast and Ghana, even though exploitative practices have also been found in other countries, such as Brazil and Indonesia. Moreover, these partnerships rely on the actions of the cocoa industry and the governments of cocoa-producing countries, while neglecting consumers as powerful actors capable of contributing to change. This study concludes that partnerships hold great potential to manage complex sustainability issues, but only if and when they are not used exclusively as lobbying tools.

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23    For a complete discussion,  see P. Glasbergen, F. Biernmann, and A.P.J Mol, "Partnerships, Governance and Sustainable Development. Reflections on Theory and Practice," Chelthenham, UK: Edward Elgar Publishing, 2007.

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# Multi-stakeholder regulation of conflict minerals in the Democratic Republic of Congo: The challenges to include missing voices from the DRC.

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A B S T R A C T

The Eastern Democratic Republic of Congo (DRC) is endowed with valuable minerals that are critical for many industries, specifically the electronics industry. However, the area has been plagued with violent conflict and insecurity since 1996. The conflict is often explained with "resource curse" theory and is largely attributed to the profits derived from the trade in these minerals, hence the name "conflict minerals." As the demand for these minerals remains strong, even in the stagnant global economy, and the minerals trade continues to drive the conflict, various initiatives to curb the trade in conflict minerals have been developed. Given the complex supply chains of these minerals and weak governance of the DRC state, the initiatives increasingly adopt multi-stakeholder processes. This article aims to examine the recent development of these multi-stakeholder processes to regulate conflict minerals in global supply chains. It identifies a number of challenges in their implementation and reflects the externally driven agenda of responsible supply chains, and the lack of participation by local stakeholders. Furthermore, the article highlights some obstacles to meaningful participation of local stakeholders.

## Introduction

This article seeks to examine the multi-stakeholder processes to regulate conflict minerals, originating from the Democratic Republic of Congo (DRC), in global supply chains. Eastern DRC is endowed with valuable minerals, such as tantalite, tin, tungsten and gold. These minerals have wide ranging applications and the demand for them has grown rapidly since the 1990s, particularly within the electronics industry. This part of the DRC has been plagued with violent conflict and insecurity since 1996 and the situation is regarded as one of the worst humanitarian crises that has claimed more than 5m people's lives and caused approximately 1.7m Internally Displaced Persons (IDPs),[1] as well as 491,500 Congolese refugees.[2] The country has also been labeled as "rape capital of the world" by the United Nations (UN).[3]

The conflict is often explained by prominent "resource curse" theories and largely attributed to the profits derived from the trade in the above minerals. These minerals are increasingly called "conflict minerals" as financial benefits from the control, exploitation, trade, taxation, or protection of these minerals contribute to armed conflict, or actors involved in the mineral exploitation benefit from the context

of armed conflict.[4] As the demand for these minerals remains strong, even in the stagnant global economy and trade in conflict minerals continues, the issue has drawn global attention and prompted numerous investigations and campaigns over the last decade.

A series of investigations and reports made by the UN Panel of Experts between 2001 and 2003[5] was notable in pointing out the role of business in fuelling the DRC conflict and for the first time named the list of companies which were involved in the illegal exploitation of natural resources in the DRC. These investigations were followed by numerous studies on the role of minerals exploitation and trade in driving the conflict[6] as well as NGO campaigns to advocate the cause of the DRC conflict and to call for action.[7]

End-user companies of conflict minerals, such as electronics companies, have been persistently targeted by these campaigns. Given their vulnerability to reputational risk from being associated with any human rights abuses within their supply chains, the management of global supply chains has become a key strategic management issue.[8] In response to the growing need to address the business and human rights

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1   UNHCR, "UNHCR country operations profile - Democratic Republic of the Congo," http://www.unhcr.org/pages/49e45c366.html

2   UNHCR, "UNHCR Global Trends 2011: A Year of Crises," 2011, http://www.unhcr.org/4fd6f87f9.html

3   BBC News, "UN official calls DR Congo 'rape capital of the world," 28 April 2010, http://news.bbc.co.uk/1/hi/8650112.stm

4   P. Le Billon, "Getting It Done: Instruments of Enforcement," in Ian Bannon and Paul Collier (eds), Natural Resources and Violent Conflict: Options and Actions. Washington, DC: World Bank, 2003, pp. 215-286, 216.

5   Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo

6   For example, DFID, Trading for Peace: Achieving security and poverty reduction through trade in natural resources in the Great Lakes area, Research Report, October 2007, London: DFID, 2007; INICA, Natural Resources and Trade Flows in the Great Lakes Region, Phase 1 Report. Kigali: INICA (Initiative for Central Africa), 2007; N. Garrett and H. Mitchell, Trading Conflict for Development: Utilising the Trade in Minerals from Eastern DR Congo for Development, April 2009, London: Resource Consulting Services; UNSC, Final Report of the Group of Experts on the Democratic Republic of the Congo. S/2008/773, 12 December 2008

7   For example, Global Witness, makeITfair and Enough Project.

8   M. Shtender-Auerbach, "The Top 5 Socio-Political Business Risks for 2010," 13 January 2010, www.huffingtonpost.com/michael-shtenderauerbach/the-top-5-socio-political_b_421466.html

issues, the UN "Protect, Respect and Remedy" Framework, comprising three core principles, "the State duty to protect against human rights abuses by third parties, including business, the corporate social responsibility to respect human rights, and the need for more effective access to remedies," was developed in 2008.[9] The second principle of the framework states that the corporate responsibility to respect human rights is the "basic expectation society has of business," which requires due diligence,[10] "a process whereby companies not only ensure compliance with national laws but also manage the risk of human rights harm with a view to avoiding it" and hence "to do no harm."[11]

As such, the human rights due diligence concept has become a corner stone in the discussion around - and the efforts to address - conflict minerals in global supply chains. While the traceability of minerals is essential in applying due diligence, it is enormously challenging to achieve, owing to the extensive minerals supply chains in the global economy and the complex networks of artisanal mining and the informal economy in eastern DRC.[12] Nevertheless, performing human rights due diligence has become a requirement, following the enactment of the US Dodd-Frank Wall Street Reform and Consumer Protection Act in July 2010.[13] The Section 1502 of the Act,[14] known as the conflict mineral provision, requires listed companies to disclose whether their product contains tantalum, tin, tungsten, gold or their derivatives originated from the DRC or its neighboring countries and to provide an independent audited report on due diligence undertaken on the chain of custody. To comply with the conflict mineral provision, companies have to trace the origin of minerals that were used in their products throughout the entire supply chains across the globe. In this context, various initiatives to establish the traceability of minerals and to control conflict minerals in supply chains have recently emerged. Given the complex supply chains of minerals, the initiatives increasingly adopt multi-stakeholder processes.

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This article is structured in three sections. It sets out to briefly review the development of six multi-stakeholder processes to help regulate conflict minerals in global supply chains. In the first section it focuses on the objectives, participants, structures and implementation. It then discusses the progress and challenges of these processes, and points out local conditions and perspectives that are largely excluded in the multi-stakeholder processes. The third section introduces some "missing voices" from the ground and highlights the challenges

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9    J. Ruggie, "Protect, Respect and Remedy," Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. Human Rights Council, A/HRC/8/5, 7 April 2008. A new set of Guiding Principles for Business and Human Rights, which outlines how the UN "Protect, Respect and Remedy" Framework should be implemented, was endorsed by the United Nations Human Rights Council on 16 June 2011. See UNOG, "UN Human Rights Council endorses new guiding principles on Business and Human Rights," 16 June 2011, http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/3D7F902244B36DCEC12578B10056A48F?OpenDocument

10    Ibid, p. 5.

11    Ibid, p. 9.

12    According to the World Bank, Democratic Republic of Congo: Growth with Governance in the Mining Sector. Report No. 43402-ZR, May 2008, Oil/Gas, Mining and Chemicals Department, AFCC2, Africa Region, an estimated 90% of minerals are produced artisanally. In addition, DFID, op. cit. found that more than half of natural resource exports from the DRC are not officially recorded, owing to underdeclared exports for tax evasion and the lack of capacity and weak governance within the state institutions.

13    United States of America, SEC (Securities and Exchange Commission), Dodd-Frank Wall Street Reform and Consumer Protection Act. 2010, http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf

14    KPMG, Conflict Minerals Provision of Dodd-Frank: Immediate implications and long-term opportunities for companies, August 2011, New York: KPMG, 5

> *The benefit of the OECD Guidance is limited to providing a useful starting point, as the OECD Guidance does not explain how supply chain due diligence can be carried out*

to involve wider local stakeholders in the multi-stakeholder processes.

The qualitative data for this article was collected from relevant literature, news and reports as well as fieldwork carried out in Rwanda in 2009.[15]

## Multi-Stakeholder Initiatives to Control Conflict Minerals in Global Supply Chains

This section introduces the six most established multi-stakeholder initiatives (MSIs) to help control conflict minerals in global supply chains.

## The Organisation for Economic Co-operation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

The OECD developed the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas[16] in 2011 to provide a practical guideline for companies wishing to purchase minerals without violating human rights or contributing to conflict through their mineral or metal purchasing decisions and practices. The OECD

Guidance was developed to be practical with collaborative constructive approaches through offering a multi-stakeholder process with in-depth engagement from stakeholders.[17]

Currently, there are approximately 50 stakeholders involved in this multi-stakeholder process. They include the OECD, World Bank, the UN Group of Experts on the DRC (UN GoE), the UN Organization Stabilisation Mission in the DRC (MONUSCO), the International Conference on the Great Lakes Region (ICGLR), industry and trade groups such as Electronic Industry Citizenship Coalition (EICC), Global e-Sustainability Initiative (GeSI), International Tin Research Institute (ITRI), Responsible Jewelry Council, World Gold Council, LBMA and International Council on Mining & Metals, companies such as Ford, Thaisarco, Malaysia Smelting and Anglo-Gold Ashanti, the Congolese Ministry of Mines, SAESSCAM,[18] artisanal mining cooperatives, trading houses, civil society and international NGOs such as Global Witness, Revenue Watch and Enough Project.[19] These stakeholders were involved and contributed to the elaboration of the OECD Guidance and are fully supportive of it. Moreover, they continue working through the multi-stakeholder forum for conflict-free mineral supply chains, convened by the OECD, ICGLR and UN GoE, to ensure the effective dissemination and implementation of the OECD Guidance.[20]

The OECD Guidance established a widely accepted definition of due diligence and standards for risk-based due diligence in the conflict mineral supply chain by taking into consideration the complex operating environments in the DRC, as well as the due diligence guide-

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15    The fieldwork was conducted in Rwanda by the author as part of PhD research, "Conflict coltan: Local and International dynamics in the Democratic Republic of Congo," between 2007 and 2011.

16    OECD, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Paris: OECD, 2011a

17    OECD, "A Joint letter to U.S. Security and Exchange Commission," dated 29 July 2011, 2011b, http://www.sec.gov/comments/s7-40-10/s74010-282.pdf

18    Service d'Assistance et d'Encadrement du Small Scale Mining (Technical Assistance and Training Service for Small-Scale Mining) is the DRC government authority responsible for organizing and supervising the artisanal mining sector.

19    T. Gillard, "The OECD Due Diligence Guidance for Guidance for Conflict-Free Mineral Supply Chains," power point presentation for 20 September 2011, LBMA (LPPM) Precious Metals Conference 2011

20    OECD 2011b, p.2, para.1, above n7

lines provided by the UN GoE.[21] Nonetheless, the benefit of the OECD Guidance is limited to providing a useful starting point, as the OECD Guidance does not explain how supply chain due diligence can be carried out.[22]

## ICGLR Regional Certification Mechanism (RCM)

The aforementioned ICGLR,[23] is a regional body of 11 African country members[24] launched in 2003 under the auspices of the UN and the African Union (AU). It recognizes that the illegal exploitation of natural resources constitutes a violation of the state's right of permanent sovereignty over their natural resources and represents a serious source of insecurity, instability, tension and conflict in the region.[25] It therefore aims to promote peace, security, democracy and development in the Great Lakes Region through the concerted effort of the member countries.

The ICGLR developed "the Regional Initiative against the Illegal Exploitation of Natural Resources" in order to break the link between mineral revenues and rebel financing by adopting six tools, namely a Regional Certification Mechanism (RCM), harmonization of national legislation, formalization of the artisanal and small-scale mining sector, a regional database on mineral flows, promotion of the Extractive Industries Transparency Initiatives (EITI) and a whistle-blowing mechanism. The RCM is the

key tool of this initiative and will validate that minerals were mined under acceptable standards, in areas free of conflict and that they have exited their country of origin legally. The ICGLR supports the OECD Guidance and harmonized the RCM standards and audits with the OECD Guidance as well as the Certified Trading Chains below. The ICGLR Steering Committee created an audit committee, which includes government, industry and civil society members from the ICGLR multi-stakeholder group and they will be responsible for accrediting independent third party auditors as well as overseeing the audit system.

## Certified Trading Chains (CTC)

The Certified Trading Chains (CTC) concept was developed by the German Federal Institute for Geosciences and Natural Resources (BGR)[26] out of two research projects carried out in 2006 in order to establish systems to provide assurance of the origin of tantalum and of production standards.[27] The CTC standards, drafted by the BGR, were consulted through multi-stakeholder processes[28] and finalized to include five principles in 2009. The CTC aims to foster traceability, transparency and responsible production standards in the artisanal and small-scale mining sector and includes performance monitoring, through third party baseline audits and compliance audits, to provide the base for potential certification at a national level. It started to support the DRC Ministry of Mines in its effort to strengthen transparency and control in the mining sector through Min-

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21   The guidelines is provided in UNSC, "Letter dated 15 November 2010 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council," S/2010/596, 29 November 2010, http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/596, and adopted in UNSC, Resolution 1952 (2010), S/RES/1952 (2010), 29 November 2010, http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1952

22   KPMG, p. 7, above n14.

23   www.icglr.org/

24   The member countries include Angola, Burundi, Central African Republic, the DRC, Kenya, the Republic of Congo, Rwanda, Sudan, Tanzania, Uganda and Zambia.

25   ICGLR, "Pact on Security, Stability and Development in the Great Lakes Region," 14 and 15 December 2006, Article 9

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26   www.bgr.bund.de

27   BGR, "Mineral Certification at the BGR," http://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/Home/CTC_node_en.html;jsessionid=9D214EA0D26CB7B286445EA3D89606E7.1_cid289; BGR, "Mineral Certification: Certified Trading Chains (CTC) and the Analytical Fingerprint (AFP)," Newsletter 01/2012, http://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/Downloads/newsletter_01_2012.html

28   Pre-Conference Technical and Collaborative Sessions Workshop 7: "Update on the BGR Pilot Certification Programme," the 8th CASM Annual Conference, 7 October 2008; Fatal Transactions and Bonn International Centre for Convention's Conference "Digging for Peace – Private Companies and Emerging Economies in Zones of Conflict' in Bonn, 21-22 November 2008."

eral Certification in 2009. In addition, most CTC standards have been incorporated into the IC-GLR RCM as progress criteria.

## Conflict Free Smelter (CFS) program

Two electronics industry associations; Electronic Industry Citizenship Coalition (EICC)[29] and Global e-Sustainability Initiative (GeSI),[30] view responsible sourcing as a priority for their members and aim to extend their influence beyond their immediate suppliers to improve social and environmental conditions throughout their extensive supply chains. They created the EICC and GeSI Joint Extractives Workgroup[31] in 2005 and encourage other companies and sectors to join their activities to improve transparency in supply chains, though there is a fee to join.

The EICC and GeSI Joint Extractives Workgroup developed the Conflict Free Smelter (CFS) program[32] for tin, tantalum, tungsten and gold in 2010 in order to enable companies to source conflict-free minerals. The CFS is a voluntary program in which an independent third party assesses smelters to determine whether they demonstrated that all the materials they process are from conflict-free sources. This is done based on business process and material analysis reviews. The CFS certifies the conflict-free status of minerals up to the smelters level and supports other processes, such as the ITRI Tin Supply Chain Initiative below, to validate upstream activities.

## ITRI Tin Supply Chain Initiative (iTSCi)

International Tin Research Institute (ITRI), an industry association, developed a chain of custody and due diligence system, the ITRI Tin Supply Chain Initiative (iTSCi), in 2008.[33] The iTSCi aims to support upstream companies, from mine to smelter, in adhering to the OECD Guidance at a practical level. It includes a chain of custody data collection through a "bag and tag" system, which adds unique bar-coded mine tag and middleman processor tag to the bag of minerals to provide data and records for purpose designed log books, risk assessment and independent third party audits. The iTSCi has been implemented by the DRC government and is monitored by multi-stakeholder committees, while all members in the upstream supply chain are audited by an iTSCi auditor to provide the information required by the aforementioned CFS.

The iTSCi has been implemented in Rwanda and Katanga Province of the DRC and will expand to include the whole Great Lakes Region. Furthermore, the iTSCi is used by the closed-pipe supply chain for tantalum by the Solution for Hope Project[34] and will cooperate with the ICGLR to set up the RCM for tin.

## Public-Private Alliance for Responsible Minerals Trade (PPA)

The Public-Private Alliance for Responsible Minerals Trade (PPA)[35] was launched in 2011 as a joint effort between the US State Department, the US Agency for International Development (USAID), NGOs and companies/industry organizations to support supply chain solutions to the conflict minerals challenges in the DRC and the Great Lakes Region. Its aim is to support the development of responsible and conflict-free supply chain systems and provide a platform for coordinated, productive communication and collaboration among all supply

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29   www.eicc.info/

30   www.gesi.org/

31   EICC and GeSI, "Join the EICC and GeSI Joint Extractives Workgroup: A multi-sector effort to enable responsible sourcing of materials," 2012, www.eicc.info/documents/ExtractivesWorkgroupWhitepaper.pdf

32   www.conflictfreesmelter.org/; www.eicc.info/CFSProgram.shtml

33   ITRI, "iTSCi Project Overview," www.itri.co.uk/index.php?option=com_zoo&view=item&Itemid=189

34   The Solution for Hope Project was launched by Motorola Solutions Inc. and AVX Corporation as a pilot initiative to secure conflict-free tantalum from the DRC in July 2011. It uses a closed-pipe supply line and a defined set of key suppliers in Katanga Province to source minerals in the region. For more information, see http://solutions-network.org/site-solutionsforhope/

35   www.resolve.org/site-ppa

chain initiatives and participants to help develop harmonized systems. The PPA encourages interested organizations to become members.

## The Progress and Challenges of the Multi-Stakeholder Regulation of Conflict Minerals

The Multi-Stakeholder Initiatives reviewed in the preceding section achieved the goal of developing mechanisms to help control conflict minerals in global supply chains. The OECD Guidance and CTC provide standards, elaborated through multi-stakeholder consultations, and the ICGLR, CTC, CFS and iTSCi use independent third party audits to certify the fulfillment of their specific conditions. The PPA offers a multi-stakeholder platform to facilitate the harmonization and coordination of these different mechanisms. While the participation to these multi-stakeholder processes is by and large open, it is normally international companies that are encouraged to participate by paying fees or attending workshops in Washington D.C., thereby excluding some potentially important local stakeholders.

While it is premature to evaluate the effectiveness of these mechanisms as they have only just started, to date their effectiveness in controlling conflict minerals in global supply chains has been questionable. This is partly owing to the complex supply chains, the confidentiality of contracts and a shortage of minerals to meet the current global demand.[36] However, it is also due to local conditions at the upstream supply chain in the DRC that are not fully considered in the design of the mechanisms.

At the extraction stage in eastern DRC, minerals are often extracted illegally by artisanal miners in remote areas where poverty is rife, and infrastructure is lacking, and they are then transported and traded largely within an extensive informal sector. There are also important questions about security conditions in

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the area and the political will of local actors for implementing these mechanisms in the DRC. These situations are shaped by some fundamental governance issues in the country. Firstly, there is an issue of mine ownership conflicts, resulting from the duplications and complexities of mine ownership, governed by contradicting laws in the DRC,[37] as well as the lack of government control of territories.[38] Secondly, artisanal mining is largely informal and illegal albeit pervasive partly because of the inadequate provisions of the current Mining Code,[39] which encourages fraud and leaves the artisanal mining sector illegal and unregulated without providing any legal protection for artisanal

36    S.B. Young, "Social and Environmental Responsibility in Metals Supply to the Electronic Industry," June 20 2008, http://www.eicc.info/PDF/Report%20on%20Metal%20 Extraction.pdf

37    They are the Mining Code of 2002, the General Property Law of 1973 and customary law. For more details, see Chris Huggins et al., "Conflict in the Great Lakes Region – How is it linked with land and migration?," Natural Resource Perspectives, 96, March 2005, London: Overseas Development Institute (ODI) and Mahmood Mamdani, "Understanding the Crisis in Kivu: Report f the CODESRIA Mission to the Democratic Republic of Congo, September 1997," text of report to be submitted to the General Assembly of the Council for the Development of Social Research in Africa (CODESRIS), Centre for African Studies, University of Cape Town, Dakar, 14-18 December 1998, www.ukzn.ac.za/ccs/ files/mamdani.kivu.pdf

38    J. Cuvelier (ed.), The complexity of resource governance in a context of state fragility: The case of eastern DRC, November 2010. London: International Alert; PPA, "PPA Governance Committee Members Summary Trip Report – Feb 4-8th, 2012 – M. Loch, J. Celorie, S. Lezhnev, F. Bafilemba, R. Robinson," http://www.resolv. org/site-ppa/files/2011/09/In-region-Trip-Report-Kivu-Leg. pdf

39    The Government of the Democratic Republic of Congo, LAW No. 007/2002 of JULY 11, 2002 RELATING TO THE MINING CODE, www.unites.uqam.ca/grama/pdf/ DRC2002.pdf

mining communities.[40] Thirdly, there is a huge gap between law and enforcement, exemplified by smuggling, undervaluation to evade tax, secrecy and extensive corruption, owing to the weak internal controls within the DRC.[41] This is caused by the lack of government control and security[42] as well as insufficient incentives, resources and capacity.[43]

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Without embracing these local conditions, the multi-stakeholder mechanisms may negatively influence the socio-economic and environmental conditions of the artisanal mining community in the DRC,[44] such

as creating a *de facto* embargo on sourcing minerals from the region[45] and unintended tensions within the mining community.[46] Moreover, they are not likely to delink mineral extraction and trade from the violent conflict in eastern DRC because of the complex relationship of the conflict and mineral extraction and trade.[47]

## Challenges to include missing voices from the DRC

It can be argued that the disregard of the local socio-economic and political conditions above and the narrow technical focus of the multi-stakeholder mechanisms are the consequences of the externally driven nature of the conflict mineral agenda to secure responsibly sourced conflict-free raw materials.[48] The participation of wider stakeholders from the upstream supply chain communities is evidently lacking; local actors demand their voices be heard and be included in the decision making processes.[49] They express that many existing local initiatives on the ground have been ignored and are not offered the means and resources to be sustainable. They demand communication and information sharing between local and international groups. Congolese civil society representatives request the decision making processes not only to involve local stake-

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40   N. Garrett, The Extractive Industries Transparency Initiatives (EITI) & Artisanal and Small-Scale Mining (ASM): Preliminary Observations from the Democratic Republic of the Congo (DRC), Draft Report 22 October 2007, http://eiti.org/files/Garrett_EITI_10_2007.pdf

41   PAC and CENADEP, Diamond Industry Annual Review: Democratic Republic of the Congo 2005. Ottawa: PAC (Partnership Africa Canada) and Kinshasa: CENADEP (Centre National d'Appui au Développement et à la Participation Populaire); PAC, Diamonds and Human Security Annual Review 2009, October 2009, Ottawa: PAC (Partnership Africa Canada)

42   J. Burbank, The effect of the Kimberley Process on Governance, Corruption, & Internal Conflict, The Fund for Peace Globalization & Human Rights Series, Spring 2006. Washington DC: The Fund for Peace

43   Rachel Perks and Koen Vlassenroot, "From Discourse to Practice: A Sharper Perspective on the Relationship between Minerals and Violence in DR Congo," in J Cuvelier (ed.), The complexity of resource governance in a context of state fragility: The case of eastern DRC, November 2010. London: International Alert, pp. 64-69; Email communication, DRC National Coordinator for the ICGLR, 20 March 2010

44   Young et al, p. 127, above n36.

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45   N. Garrett and H. Mitchell, M. Smith, "Intel Plans Conflict-Free Tantalum Microprocessors," Tantalum Investing News, Articles, 7 June 2012; Steven B Young et al. , 136

46   PACT, PROMINES Study: Artisanal Mining in the Democratic Republic of Congo, June 2010. Washington DC: PACT, 9

47   Perks and Vlassenroot, above n43, Miho Taka, "Coltan mining and the conflict in the eastern Democratic Republic of Congo (DRC)," in Malcolm McIntosh and Alan Hunter (eds), New Perspectives on Human Security, Sheffield: Greenleaf Publishing, 2010; M. Taka, "Conflict Coltan: Local and International Dynamics in the Democratic Republic of Congo," unpublished PhD thesis, 2011

48   M.Taka, 2011, above n 47.

49   P. Pöyhönen et al., Voices from the Inside: Local views on mining reform in Eastern DR Congo, October 2010. Helsinki & Stockholm: Finnwatch & Swedwatch

holders but also to include their viewpoints in order to integrate local concerns.[50]

However, there are challenges in consulting with these local stakeholders to include their concerns, which would help formulate effective policies and measures to improve the conditions on the ground. For example, most of the artisanal miners are not organized to voice their issues and concerns freely and constructively,[51] and where there are some artisanal mining cooperatives, these cooperatives have different purposes and do not necessarily protect the interests of miners.[52] There is also a question as to whether they have the capacity and resources to organize themselves so that they can express their views to influence the policies and measures which affect them.[53] Moreover, it is not realistic to consult armed groups despite their significant influence on local conditions, since companies cannot be seen to be engaging them. Meaningful participation of key local actors is also essential in providing them the ownership of initiatives to enhance their commitment.

This article suggests that the inclusion of local perspectives in designing and implementing multi-stakeholder mechanisms could lead to sustainable and responsible management of mineral resources in the long run. However, by disregarding the local socio-economic and political contexts, the national laws and local arrangements around mining, the multi-stakeholder regulation of conflict minerals can have an adverse impact on the conflict and local communities. Although there are obstacles to include all key local stakeholders in the multi-stakeholder processes, the progress of the multi-stakeholder mechanisms ultimately rely on how openly and constructively local stakeholders can be engaged with, in

order to build consensus on the issues which affect the local conditions.

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50   SOMO, Roundtable on Conflict Minerals Legislation: Towards prevention of trade in conflict minerals and promotion of trade in clean minerals from Congo, European Parliament, Brussels, 26 May 2011. London: SOMO

51   N. Garrett, "Observations from the DRC," African Analyst, 3 (1), 2008, pp. 79-97

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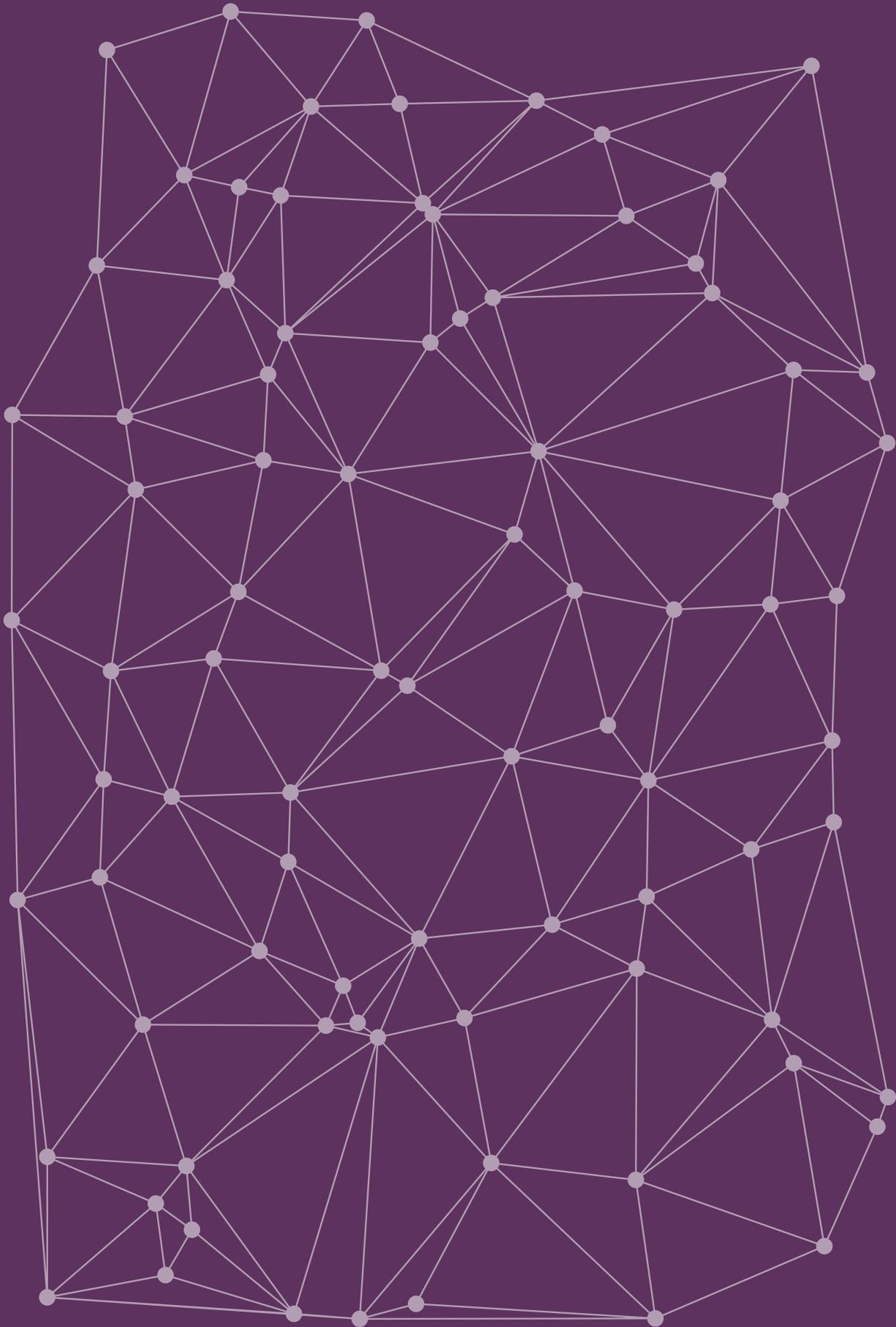
# Unveiling the 'Shadow World':
## Civil society engagement and Public Control of the Defense Sector

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A B S T R A C T

Defense has historically been seen as one of the most closed and secretive sectors, with little transparency and posing significant challenges to gaining access to information and holding the sector accountable. Because of the nature of the sector's activities, as well as the sheer size and technical complexity, it often seems impenetrable to citizens and civil society organizations (CSOs). Yet there are two facts that fundamentally challenge the idea that public control of the defense sector is too difficult or unachievable: first, the defense sector and their establishments exist to protect and defend a country and its citizens and therefore, they are ultimately accountable to their citizens. Second, many people within defense institutions are interested in fighting corruption, because it is in their best interests. Corruption wastes defense institutions' resources, hurts their operational effectiveness, and reduces public trust in them. This article argues that greater transparency is needed in defense and security, and that civil society has a key role to play in demanding integrity and ensuring that defense and security establishments are accountable to citizens. Civil society activities are not limited to external monitoring and activism, but to be effective should also include active engagement and collaboration with defense institutions, both to catalyze and support reform within such establishments.

quirements can allow for the circumvention of established rules and procedures. Combined with secrecy, this creates a fertile ground for opacity and uninformed decision-making.

The concentration of power enjoyed by the sector is an important factor to be considered. Enormous influence is wielded by defense companies in countries such as the US, Russia, UK, France, Germany, Sweden, Holland, Italy, Israel and China.[1] Government defense establishments, and the military in particular, are often insulated from outside command. Although the military in many countries might be perceived as corrupt, it is often a highly respected by the general public and almost as trusted in terms of corruption as religious bodies and non governmental organizations (NGOs), as indicated in Transparency International's Global Corruption Barometer, 2006.[2] The military's exclusive and patriotic role of protecting a country's citizens, national territory and interests can create an image of infallibility.[3]

Such characteristics defining the defense and security sector, in combination and in isolation, can lead to full or partial exemption from oversight and accountability to society. A lack of technical knowledge of defense budgets and military operations may affect the ability of parliamentarians to perform critical oversight.[4] Efforts by civil society organizations (CSOs) to increase transparency and accountability in the defense sector may be blocked on the reasoning that CSOs lack the competence and expertise required to engage in the sector. Andrew Feinstein's characterization of the arms trade as a "shadow world," could well be applied to the entire defense and security sector; a world cloaked in secrecy, difficult to penetrate and obscure to comprehend and question.

**A**dvancing towards the ideals of human freedom, good governance and international security in the current age of globalization requires careful monitoring of national defense and security establishments and defense companies. The sensitivity associated with defense corruption has decreased since the Cold War era, and the security landscape is increasingly conducive to reform. It is a sector cloaked in secrecy and as such it is rife for corruption with dangerous consequences. The protection of the lives of citizens, nations' territorial integrity, armed forces' ethical integrity, vast sums of money, and the international security environment are all at stake.

National defense and security forces exist to serve and protect a state's citizens and territory; this makes them fundamentally accountable to the people. At a practical level, defense and security forces are – for the most part – funded by the taxpayer. However, given the technical and often secretive nature of the sector, there are significant challenges to citizen oversight of the sector.

The defense and security sector has historically presented ample opportunities for corruption to prosper as it has lacked levels of transparency necessary to ensure propriety. The shroud of secrecy surrounding most defense activities often extends beyond necessity. "National security interests" has become a widely used term and –can be widely abused, yet challenging the validity of whether these interests justify secrecy is inevitably difficult. Furthermore, the urgency associated with meeting operational and defense re-

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1   A. Feinstein, "The Shadow World: Inside the Global Arms Trade," Farrar, Straus & Giroux, 2011.

2   Transparency International, "Building Integrity and Reducing Corruption Risk in Defense Establishments," Global Corruption Barometer 2006.

3   "Building Integrity and Reducing Corruption in Defense: A Compendium of Best Practices," Geneva Centre for the Democratic Control of the Armed Forces, Geneva, 2010.

4   Ibid.

An accountable defense sector requires transparency of information to citizens, enabling debate and dialogue on defense issues; oversight and monitoring by parliament and civil society of defense procurement, reform processes, or other activities; and anti-corruption mechanisms and relevant legislation that strengthens the integrity of defense institutions.

## Demanding accountability to citizens and reducing defense corruption

The ultimate aim of anti-corruption efforts and initiatives to strengthen integrity in the defense and security sector is a world where governments, armed forces and arms transfers are free from corruption and impropriety. Corruption in the defense sector can take many forms; examples might include a defense policy that is unfairly influenced by a particular defense company, to bribery in major arms deals, to nepotism determining appointments and promotions, to corrupt behavior by soldiers or peacekeeping forces. Tackling corruption in this seemingly impervious sector cannot be achieved overnight; it is a complex and multifaceted undertaking, which can only be accomplished through a sustained process. Awareness and acknowledgement of the problem of defense corruption in the defense and security sector, and the high risks associated with it is a first step in working towards a solution.

The importance and danger posed by corruption in the security sector is of serious public concern, so CSOs are a natural source for bringing about change. The traditional image of civil society's role is as an external watchdog; an NGO may advocate for changes at a policy level and oversee reform processes from a distance, for example, or an investigative journalist may uncover specific cases of corruption. But in exerting civil control of the defense sector there is another role that civil society can play, which is to influence defense institutions and personnel by actively engaging them in the process of building integrity and countering corruption. In this way civil society not only puts pressure from

*National defense and security forces exist to serve and protect a state's citizens and territory; this makes them fundamentally accountable to the people*

the outside, but also acts as a catalyst or supports a force for change from the inside.

The Transparency International Defense and Security Programme (TI-DSP) has been working towards an accountable, transparent defense sector since 2004. This article draws largely on its work and lessons that have been learned through its experience working directly with governments and in partnership with other NGOs and chapters of TI. TI-DSP works in two main ways: first, by putting pressure on defense establishments from the outside to change and reform. This includes research and advocacy efforts, such as the Defense Anti-Corruption Indices, and lobbying for anti-corruption mechanisms in the UN Arms Trade Treaty. The second aspect of TI-DSP's work is to support reform through engagement with defense institutions, including training, workshops, and practical advice. TI-DSP has found that this is a powerful combination of tactics that contributes to increased awareness of corruption in the sector and practical steps taken to reduce it, as well as a growing belief that it can be tackled.

In addition to the experiences and research of TI-DSP, this article draws upon the work of other NGOs dedicated to building a more accountable security sector. Though this article focuses primarily on the defense sector specifically, rather than security more broadly (which is generally considered to include institutions such as the judiciary, police and border control), it refers to information related to civil society oversight of security, as many of the lessons learned are applicable to defense. One useful civil society resource for broad advice and information is the Geneva Centre for the Democratic Control of the Armed Forces (DCAF)'s publication, *Public*

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*Oversight of the Security Sector: A Handbook for Civil Society Organisations.*[5]

## Engaging defense institutions

While defense personnel may be well aware of the problem of corruption and recognise it as a systemic issue, which is both morally and professionally wrong, their acknowledgement tends to be behind closed doors, rather than in the public sphere. Developing a dialogue on the subject of corruption, and acknowledging within the ministry that it is a problem that can be solved, is a key step towards greater openness and transparency to the public, and ultimately towards building a more effective defense institution. Creating a platform for discussion of the issue at the level of the leadership is of utmost importance. A combination of strong political will and clear, resolute anti-corruption messaging from leadership and determined "change agents" are an ideal basis for the sustainable reduction of corruption risks.

Defense establishments often seem impenetrable to civil society; conversely, defense institutions, are used to seeing civil society as external watchdogs. They may see civil society as inimical and resist open dialogue and engagement. Tinatin Mikiashvili describes the shared function of civil society as both watchdog and supporter of legitimate, strong governance in Georgia: "[W]hile NGOs and media representatives can often be critical of governments, they should not automatically be seen as a threat. Rather, their aim is to ensure that security institutions act in transparent and democratic ways, which usually bolsters the legitimacy and strength of the state." When seeking engagement with defense and security officials, TI-DSP emphasises the shared aims between defense institutions and civil society. It uses three main messages to emphasise the importance of tackling corruption from a defense perspective:

1.   Defense corruption wastes scarce resources;

2.   Defense corruption reduces operational effectiveness;
3.   Defense corruption reduces public trust in the defense sector. [6]

These messages define the simple reasons why combating corruption is in defense institutions' interest and helps open a dialogue that is based on mutual aims.

At a practical level, the TI-DSP team includes several retired senior military personnel; they share a background and speak a common "military language," which builds trust, facilitates dialogue, and may alter the traditional image of civil society as antagonistic.

Where there is already acknowledgement of defense and security corruption, it may still be perceived as an overwhelming and unconquerable issue. TI-DSP has developed a typology of corruption risks, which identifies 29 areas of corruption risk in five key categories: political risk, financial risk, personnel risk, operational risk, and procurement risk. Breaking down the subject in its various shapes and forms is helpful in instilling confidence that each problem can be understood, confronted, and repaired. This typology can provide a base from which governments and civil society organisations can identify areas in need of reform and develop plans to tackle it, which should include civil society oversight and monitoring of progress.

The potential for positive engagement between CSOs and defense institutions is clear. However, in general, the practice tends to be limited. The Government Defense Anti-Corruption Index, which looks in-depth into the corruption risk levels in 82 national defense establishments worldwide, includes a question regarding defense and security institutions' openness towards CSOs. Only one country, Australia, scored a top score (4, on a scale 0-4) on this question, indicating that "there is a policy or strong evidence that defense and security institutions are open towards CSOs, protects

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5    E. Cole, K. Eppert and K. Kinzelbach, "Public Oversight of the Security Sector: A Handbook for Civil Society Organisations," Valeur ,2008, http://www.dcaf.ch/Publications/ Public-Oversight-of-the-Security-Sector

6    M. Pyman, "Building Integrity and Reducing Corruption in Defense and Security: 20 Practical Reforms," Transparency International UK, http://www.ti-defense.org/ publications/88-building-integrity-and-reducing-corruption-in-defense-and-security--20-practical-reforms

**Image 1:**

| POLITICAL | PERSONNEL | PROCUREMENT |
|---|---|---|
| DEFENCE & SECURITY POLICY | LEADERSHIP BEHAVIOUR | TECHNICAL REQUIREMENTS / SPECIFICATIONS |
| DEFENCE BUDGETS | PAYROLL, PROMOTIONS, APPOINTMENTS, REWARDS | SINGLE SOURCING |
| NEXUS OF DEFENCE & NATIONAL ASSETS | CONSCRIPTION | AGENTS/BROKERS |
| ORGANISED CRIME | SALARY CHAIN | COLLUSIVE BIDDERS |
| CONTROL OF INTELLIGENCE SERVICES | VALUES AND STANDARDS | FINANCING PACKAGE |
| EXPORT CONTROLS | SMALL BRIBES | OFFSETS |
| | | CONTRACT AWARD, DELIVERY |

| FINANCE | OPERATIONS | |
|---|---|---|
| ASSET DISPOSALS | DISREGARD OF CORRUPTION IN COUNTRY | SUBCONTRACTORS |
| SECRET BUDGETS | CORRUPTION WITHIN MISSION | SELLER INFLUENCE |
| MILITARY-OWNED BUSINESS | CONTRACTING | |
| ILLEGAL PRIVATE ENTERPRISES | PRIVATE SECURITY COMPANIES | |

them legally, and that they encourage their engagement. They have specifically engaged with CSOs on corruption issues." Just six countries scored a '3', which indicates engagement without formal protection for CSOs' involvement.

In Australia, civil society engagement is formalized in doctrine as a strategic issue. The Civil-Military Operations doctrine of the Australian Defense Forces states "effective civil-military cooperation (CIMIC) systems will enhance force protection. CIMIC is necessary to develop a robust interface with the local population and develop trust and respect for the military force."[7]

Another example of cooperation between civil society and defense organizations is found in Argentina, where the Ministry of Defense (MOD) has signed formal agreements for collaborative work with two national NGOs, the Civil Association for Equality and Justice (ACIJ) and the Center for the Investigation and Prevention of Economic Crimes (CIPCE), as well as engaging with the international anti-corruption NGO Global Integrity on research.[8] A joint campaign was held with the MOD and ACIJ to raise awareness of corruption reporting mechanisms. The MOD and CIPCE collaborated to develop detection mechanisms for "potential

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7    "ADF Operations Series ADDP 3.11 Civil- Military Operations," Edition 2, Defense Publishing Service, Department of Defense, Canberra ACT 2600, 2009 http://www.defense.gov.au/adfwc/Documents/DoctrineLibrary/ADDP/ADDP3.11-Civil-MilitaryOperations.pdf .The Australian Defense Forces define civil-military operations as follows: "The ADF approach to CMO encompasses interaction with government agencies, international organizations, NGOs, host nation concerns, the media and civil community at the strategic or operational level."

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8    Argentina Assessment, Government Defense Anti-Corruption Index, May 15, 2013, http://government.defenceindex.org/results/countries/argentina, Question 4 and Thomas Shipley, Anne-Christine Wegener, Mark Pyman, Codes of Conduct in Defense Ministries and Armed Forces: What makes a good code of conduct? June 2011, available online: http://www.ti-defence.org/publications/90-codes-of-conduct-in-defence-ministries-and-armed-forces

cases of incompatibilities and conflicts of interest." In interviews for the Government Defense Anti-Corruption Index, representatives of the NGOs "emphasized the willingness and cooperation of the Ministry of Defense's Transparency Department during the negotiation processes."

Along with the general challenges that NGOs face in many countries that may hinder engagement with defense establishments - limited resources, a lack of capacity or expertise in particular areas, and sometimes risks posed by addressing sensitive issues - the Government Defense Anti-Corruption Index assessments of other countries shed light on some of the challenges and potential pitfalls of civil society collaboration with defense institutions. In Bulgaria, for example, there have been steps taken to involve CSOs in MOD anti-corruption efforts, including CSO monitoring of defense procurement. However, questions have been raised regarding the selection of CSOs included in these processes, with indications that they may be chosen "on the basis of their supportive attitude to the policies of the Ministry." [9] Similarly, the Sri Lankan government is believed to limit its engagement to pro-government CSOs. A lack of political bias is key to a CSO's role as a fair representation of the public's interests; without that independence and, moreover, the reputation for such independence, many of the public trust-related benefits of MOD-CSO collaboration are lost. In Zimbabwe, international political sensitivities are detrimental to engagement, as many officials view CSOs as Western agents, and "therefore, any attempt to engage with them would be perceived as an attempt to compromise national security.[10] Navigating the complex political and security environment that surrounds the defense sector may pose a challenge for CSOs, but can be eased by maintaining clear objectives, and ensuring that research and assessments are non-partisan and critical.

9    Bulgaria Assessment, Government Defense Anti-Corruption Index, Question 4, April 3, 2013, http://government.defenseindex.org/results/countries/bulgaria

10    Zimbabwe Assessment, Government Defense Anti-Corruption Index, Question 4, http://government.defenseindex.org/results/countries/zimbabwe

## Finding allies: parliamentarians, the defense industry and international organizations

There are a range of stakeholders involved in the sector beyond defense establishments, including government bodies, companies, and international organizations; these crucial actors have the ability to influence levels of corruption and should be seen by CSOs as potential allies in increasing the accountability of the defense sector overall. Each organization is likely to have leverage with another: for example, an international or regional organization such as the EU or NATO may put pressure on a national government as part of the accession process; a government's export controls may restrict a defense companies' sales.

Holding legislators and legislative defense committees accountable for their role in oversight of the national defense and security policy, the armed forces, and the intelligence agencies is crucial.  As elected representatives of citizens, legislators are in place to ensure that the public's needs are protected, and that taxpayer funds are spent effectively.

Governmental bodies tasked with monitoring budgeting processes or anti-corruption can be potential allies for CSOs. Audit and finance organizations can play vital roles in detecting and preventing abuse of the large budgets allocated to defense expenditure. National anti-corruption commissions, which have emerged in several countries should allocate significant importance to the issue of defense and security corruption. Sector-specific and context-specific reforms and strategies should be emphasised. In some countries such governmental bodies may lack the institutional support, resources, or political backing needed to carry out their tasks effectively, and support from civil society - either through public backing or by providing expertise - may be welcomed. Following the launch of the Government Defense Anti-Corruption Index in Malaysia, awareness-raising by Transparency International Malaysia and media attention, the Malaysian Anti-Corruption Government Transformation Programme's Performance Management and Delivery Unit

contacted TI to learn more about the Index methodology and findings, and have requested recommendations to include the defense sector in a government-wide reform process.

An example of public and NGO support for a governmental anti-corruption body can be found in Indonesia. In 2003, the Indonesian Corruption Eradication Commission (KPK) had a reputation for investigating corruption and convicting top governmental elite.[11] By 2009, the KPK came under attack from the police and parliament. Civil society leaders came together to protect the KPK, through "demonstrations, marches to the Presidential palace, petitions," and many other tactics of nonviolent resistance; the pressure succeeded in sustaining the KPK and initiating an investigation that succeeded in securing the resignation of officials in the police and attorney general's office, and getting the charges against KPK officials dropped. The KPK was not limited to defense, though security leaders were included in its anti-corruption efforts, but such tactics can be transferable to support governmental bodies that play a role in holding defense establishments to account.

Working with the defense industry is also key to countering corruption in the global arms trade, and it is in the best interest of the industry to prevent and counter corruption in defense companies. Significant attempts in this regard have been the creation of the Common Industry Standards (CIS), which were adopted by almost all the European aerospace and defense associations in 2003 and the global initiative of the International Forum on Business Ethics (IFBEC) in 2010.[12] Company CEOs, boards of directors and compliance officers benefit from strengthening integrity measures within their firms and avoiding engagement with governments with poor standards of integrity.

International parties play a special role in monitoring corruption in different sectors and in initiating efforts to rectify emergent problems. International organizations and aid agencies such as the UN, the OECD, NATO, the African Union, DFID, and USAID have taken steps to acknowledge the problem of corruption and to promote anti-corruption conventions relevance to it by playing a monitoring role and by creating relevant dialogue on the subject. There remains, however, space for a more nuanced approach, an increase in the scale of activity, and increased prioritization of tackling corruption specific to the sector.

> *Civil society advocacy can effect change through collective pressure by making the* status quo *untenable and exposing the problems and impact of corruption*

## External Pressure: Research and advocacy on defense

Where governments are intransigent or hostile to CSOs, engaging with the defense sector is likely to prove difficult. The lack of political will to address defense corruption may seem insurmountable. But civil society advocacy can effect change through collective pressure, which demands accountability from the sector and change by those in power, by making the status quo untenable and exposing the problems and impact of corruption. Such external pressure may lead to engagement with the defense institutions or other government bodies.

One example of external pressure transforming into engagement comes from the National Foundation for Democracy and Human

11    S. Beyerle, "People Count: how citizen engagement and action challenge corruption and abuse," Paper presented at the International Peace Research Association Conference, Sydney, Australia, July 2010, http://www.nonviolent-conflict.org/images/stories/pdfs/people_count.pdf (accessed 03/04/13).

12    M. Pyman, "Gaining ground on the anti-corruption front,"Janes Defense Weekly, November 16, 2011, http://www.ti-defense.org/publications/965-external--opinion-piece-in-jane%27s--gaining-ground-on-the-anticorruption-front, accessed May 28, 2012.

> *While defense corruption is notoriously difficult to overcome, accountability and integrity are pre-conditions for recovering the confidence and trust of citizens in public institutions*

Rights in Uganda (NAFODU), an NGO working to increase accountability in the security sector and civic engagement in Uganda. One of their projects aimed at reducing police corruption in South Western Uganda, where the police were seen as the most corrupt institution, unwilling to engage with citizens or civil society.[13] The project initially combined research, including a survey of bribe payment to police, with citizen engagement. NAFODU created a call-in radio program and text message service through which the public could contribute their experiences of police corruption. But NAFODU's focus was on improving police behavior, not just attacking it; Korugyendo Joseline, head of programs, stated "we hope the established forum will promote police integrity, promote police-community relations thereby building public trust and confidence…this will lead to competent, courageous, committed and incorruptible officers."[14] Public pressure and shaming for corrupt conduct changed the balance of power, and from a public campaign by NAFODU shifted to include direct engagement with the police, at their request, including training on integrity and good conduct. Citizen complaints about police corruption have since been reduced and NAFODU has seen a rise in positive call-ins to the radio program; the dialogue that has been built places citizens at the heart of holding the police to account.

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13    J. Korugyendo, "Laws are not enough: citizens against corruption in police and judicial institutions," Police Community Partnership Forum. NAFODU, Presentation for the 14th International Anti-Corruption Conference 2010, 14iacc.org/wp-content/.../DownloadFullPresentationII.doc

14    Ibid.

## Conclusions

While defense corruption is notoriously difficult to overcome, accountability and integrity are pre-conditions for recovering the confidence and trust of citizens in public institutions, in addition to provision of defense and security at an affordable cost and with acceptable risk. Defense corruption is a central risk issue in building international security and one, which to date, has been largely overlooked. When considering the precise role for civil society in building a more accountable defense sector, the strategies used will depend on the political and social environment of the country or region; however, examples of both external pressure on defense and security institutions and collaborative support for reform within institutions exist that show that civil society engagement in this sector is possible. We live today in an era conducive to great transformation and sweeping changes, and civil society has an increasingly active and visible role in demanding accountability by governments and companies. Defense accountability is not a subject too monumental to tackle. It is within the interests of national security, citizens, defense officials, and soldiers alike that collaboration increase and progress towards integrity is made.

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

## RAFAEL CALDERÓN

**INSTITUTION:** Rare Conservation
**ROLE:** Regional Director Latin America
**EDUCATION:** Rafael Calderon has a Masters in Natural Resources Management from California State University, Humboldt and a Bachelors of Science in Biology from the National Autonomous University of Honduras.
**EXPERTISE:** Conservation Planning and Team leading.
**EXPERIENCE:** Rafael Calderon is a conservation practitioner with 20 years of experience throughout the USA, Latin America, Caribbean and The Pacific. Rafael is currently the Director for Pride Program Latin America based out of Guadalajara, Mexico. Here leads a team of practitioners implementing Social Marketing campaigns with thematic emphasis towards conservation of biodiversity objectives. Before joining Rare, Rafael Calderon worked with The Nature Conservancy for 10 years and his last position there was "Gulf of Mexico Initiative Director" which he held for 6 years. Throughout his career R. Calderon has been involved with different organizations and countries implementing resource management activities and projects. In his professional career he's worked in Latin America, Asia-Pacific, Caribbean and the USA.

## NORA ETXANIZ

**INSTITUTION:** Transparencia Mexicana
**ROLE:** Editorial and Program Coordinator
**EDUCATION:** Nora holds a Bachelor's Degree in Law from the University of the Basque Country (UPV/EHU), and a Master's Degree in Human Rights from the University Carlos III of Madrid, Spain.
**EXPERTISE:** Human rights and transparency, accountability and good governance, new models of govenance, extractive industries, social alliances and public-private partnerships.

**EXPERIENCE:** Nora has worked in various international organisations, research centres and CSOs. She has been project coordinator and resposible for the elaboration and implementation of programmes on several human rights matters in different regions of the linked to social justice, transparency and good governance and inter-cultural dialogue. Her work in all these areas has focused on the creation and exchange of quality knowledge for political decision-making and the establishment of dialogue between different stake-holders.

## MARC ENGELHART

**INSTITUTION:** Max-Planck-Institute for Foreign and International Criminal Law, Freiburg i. Br. (Germany)
**ROLE:** Head of Section for Business and Economic Criminal Law
**EDUCATION:** Marc Engelhart has studied law in Freiburg (Germany) and Edinburgh (UK) and taken his first and second legal state examination in the state of Baden-Württemberg. He holds a doctoral degree in law from the Albert-Ludwigs-Universität Freiburg on the topic of corporate liability and compliance. He was admitted to the German bar in 2005.
**EXPERTISE:** Economic and Business Criminal Law, Corruption, Corporate Criminal Liability, Compliance, Non-Criminal Social Control Mechanisms, Corporate Governance
**EXPERIENCE:** Since 2001, Marc Engelhart has conducted research and published on economic and business criminal law from an academic perspective to political strategies for legal regulation and reform on a national and international level. From 2007 to 2010 he has worked for an international law firm as a corporate lawyer specialized in corporate governance and compliance. Among his main research areas is corporate criminal liability, compliance and crime prevention. He has been legal adviser in projects for the German Society for International Cooperation (Deutsche Gesellschaft für Internationale

Zusammenarbeit - GIZ), International Criminal Tribunal for the former Yugoslavia (ICTY), the Council of Europe and the European Commission.

## HAZEL FEIGENBLATT

**INSTITUTION:** Global Integrity
**ROLE:** Managing Director
**EDUCATION:** Hazel Feigenblatt holds a Master's Degree in Political Science from the University of Costa Rica, a Master's Degree in Public Affairs Reporting from the University of Maryland, and a Bachelor's Degree in Communication from the University of Costa Rica. She was a Fulbright's Humphrey Fellow 2002-2003.
**EXPERTISE:** Information and communication technologies for transparency, assessment of anti-corruption mechanisms, procurement and investigative journalism.
**EXPERIENCE:** At Global Integrity, Hazel Feigenblatt led the Global Integrity Report and currently leads the African Integrity Indicators project. Additionally, as the organization's Managing Director, she oversees the majority of its projects. Before joining Global Integrity, she was a three-time award-winning investigative journalist for Costa Rica's leading newspaper La Nación.

## PIETER GLASBERGEN

**INSTITUTION:** Utrecht University, Maastricht University.
**ROLE:** Emeritus Professor
**EDUCATION:** Prof. Glasbergen studied political sociology at Utrecht University. After receiving a Master's and PhD degree, he went on to become the first Professor of Environmental Policy in the Netherlands.
**EXPERTISE:** Collaborative governance, collective action, environmental policy, partnerships for sustainable development, social planning

**EXPERIENCE:** Pieter Glasbergen is the founder of the social scientific environmental teaching and research program on Governance for Sustainable Development at Utrecht University. Between1989-2008 he chaired the section Environmental Studies and Policy, Faculty of Geosciences, at Utrecht University. Since 2005, he chairs the Utrecht-Nijmegen research program on Partnerships; a collaboration of Utrecht University and Radboud University Nijmegen, with an involvement of Wageningen and Maastricht University.

## ABDULLAH KORKMAZ

**INSTITUTION:** Public Procurement Authority (PPA)
**ROLE:** Head of Department
**EDUCATION:** Abdullah Korkmaz holds a Master's degree in Public Policy from University of Exeter, UK, and a Bachelor's degree in Public Administration from Ankara University, Ankara, Turkey.
**EXPERTISE:** Public administration, local administrations, public procurement and international relations.
**EXPERIENCE:** Before joining Public Procurement Authority, he worked as a district governor in Ministry of Interior in Turkey.

## HUGUETTE LABELLE

**INSTITUTION:** Transparency International
**ROLE:** Chair of the Board of Transparency International
**EDUCATION:** Holds a PhD in Education. She is a Companion of the Order of Canada. She has been awarded honorary degrees from twelve Canadian Universities and the University of Notre Dame USA and has received several additional honors.
**EXPERTISE:** She provides advisory services to national and international organizations. She is member of the Board of the

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

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

## LILIANE MOUAN

**INSTITUTION:** Coventry University
**ROLE:** PhD Candidate
**EDUCATION:** Liliane Mouan holds a Master's degree in International Law and Human rights (with Merit) from Coventry University, England, and a Bachelor Honours degree in Law from the University of Buea, Cameroon. She is currently writing her PhD Thesis "Governing Angola's Oil Sector: The Illusion of Revenue Transparency?"

**EXPERTISE AND INTERESTS:** African political economy, African civil society and citizenship, governance and corruption, oil sector, business and human rights, corporate social responsibility, social accountability, multistakeholder initiatives.

**EXPERIENCE:** Liliane is an independent researcher and consultant. She worked on a number of international projects, including that on the ten years assessment of the UN Global Compact. She has also acted as a visiting lecturer for some UK and African universities.

## MARIJA NOVKOVIC

**INSTITUTION:** United Nations Development Programme (UNDP), Office in Montenegro
Role: Project Manager
**EDUCATION:** Marija Novkovic holds a Master's Degree in Public International Law from Queen Mary University of London, and a Bachelor's Degree from Faculty of Law, University of Montenegro
**EXPERTISE:** Good governance, rule of law, anti-corruption, public sector integrity and open government
**EXPERIENCE:** Prior to joining UNDP, Marija Novkovic worked on corruption prevention with the Montenegrin anti-corruption body, Directorate for Anti-corruption Initiative. Ms. Novkovic was involved in pioneer undertakings such as drafting the country's first ever national anti-corruption action plan and monitoring its implementation.

## LULI PESQUEIRA

**INSTITUTION:** Copernicus Institute of Sustainable Development, Utrecht University, the Netherlands
**ROLE:** PhD Candidate
**EDUCATION:** Luli Pesqueira holds a bachelor's degree on Communication Science from the Iberoamerican University in Mexico City and an MSc in Sustainable Development from Utrecht University.
**EXPERTISE:** Corporate social responsibility, international NGOs, multi-stakeholder collaboration, private governance, participatory research methods, sustainability policy. Experience: Before receiving a grant from the Mexican Council of Science and Technology (CONACYT) in 2007 to pursue MSc and PhD studies, Ms. Pesqueira worked as a market research analyst both in the public and private sector. Currently, she is a doctoral researcher at Utrecht University in the Netherlands where she studies the implications of NGO-business interactions in the context of sustainable development.

## JONAS RABINOVITCH

**INSTITUTION:** United Nations Division for Public Administration and Development Management, Department of Economic and Social Affairs
**ROLE:** Senior Advisor
**EDUCATION:** Jonas Rabinovitch holds a Master's Degree in the Economics of Urban Development Planning from the Development Planning Unit of University College London and a Bachelor's Degree in Architecture and Planning from the Federal University of Rio de Janeiro
**EXPERTISE:** Public Governance and Development Management, Knowledge Management for Development, e-Government Strategies, Urban Planning
**EXPERIENCE:** Mr. Rabinovitch has been working as a UN staff member for 20 years in various positions at the UNDP and UN Secretariat, including Senior e-Government Adviser, Senior Adviser to the Global Forum on Reinventing Government, Global Manager for the Capacity 2015 Programme and Senior Policy Adviser on public-private partnerships, on urban development, on rural-urban relations and various other topics related to development. He regularly contributes to the preparation of UN corporate policy instruments on various subjects, including e-Governance and Public Administration. Mr. Rabinovitch also provides policy advisory services in the field on e-Government and e-Governance to UN Member States in all regions and contributed to various editions of the United Nations e-Government Survey. He has been on official technical missions to more than 40 countries, including Afghanistan, Colombia, Costa Rica, East Timor, Ethiopia, Maldives, Myanmar, Zimbabwe, among others.

## MIHO TAKA

**INSTITUTION:** Centre for Peace and Reconciliation Studies, Coventry University
**ROLE:** Researcher

**EDUCATION:** Miho Taka received her Ph.D degree in international relations and sociology from Coventry University for her thesis on "Conflict Coltan: Local and International Dynamics in the Democratic Republic of Congo." She also holds a BA in Education from Osaka Kyoiku University, an MA in Third World Studies from Coventry University and a Master of Public Administration from Warwick Business School.
**EXPERTISE:** Extractive industries, corporate social responsibility, public administration, global governance, peace and conflict. Experience: Miho Taka has lived and worked in different sectors in several countries. Prior to her research career, she worked as the Country Director of an NGO in Rwanda.

## RORY TRUEX

**INSTITUTION:** Yale University, Department of Political Science
**ROLE:** Ph.D. Candidate
**EDUCATION:** Pursuing Ph.D. in Political Science; M.Phil. in Political Science; M.A. in Economics from Yale University; A.B. in Politics from Princeton University
**EXPERTISE:** Corruption; Multi-stakeholder processes; Representation; Chinese politics
**EXPERIENCE:** Mr Truex has served as a consultant to the World Bank on the Construction Sector Transparency Initiative (CoST) and as a researcher for Transparency International Nepal (TIN).

## LEAH WAWRO

**INSTITUTION:** Transparency International: Defense and Security Programme
**ROLE:** Project Officer
**EDUCATION:** Leah Wawro holds an MA in International Relations and Arabic from the University of St Andrews, in Scotland.
**EXPERTISE:** Defense and security corruption, civil society anti-corruption efforts in this sector

**EXPERIENCE:** Leah Wawro joined Transparency International's Defense and Security Programme (TI-DSP) in November 2010. At TI-DSP, Leah was part of the team that developed the first Government Defense Anti-Corruption Index, and works closely with Transparency International chapters to support their efforts to address defense and security corruption in their countries. Prior to joining TI-DSP, she worked with War Child (UK) in London and Air America Media in New York.  During a semester studying in Damascus, Syria, she volunteered with UNRWA and the Iraqi Student Project.

## METE YILDIZ

**INSTITUTION:** Hacettepe University, Ankara, Turkey
**ROLE:** Associate Professor
**EDUCATION:** Mete Yıldız holds a Ph.D. in Public Affairs from Indiana University Bloomington, Indiana, US, a Master's degree in Public Administration from University of Southern California (USC), California, US and a Bachelor's degree in Political Science and Public Administration from Middle East Technical University, Ankara, Turkey.
**EXPERTISE:** Government reform, public administration, public policy, e-Government. Experience: Before joining Hacettepe University, Mete Yıldız worked as an instructor and a visiting lecturer at Indiana University, Bloomington, US.
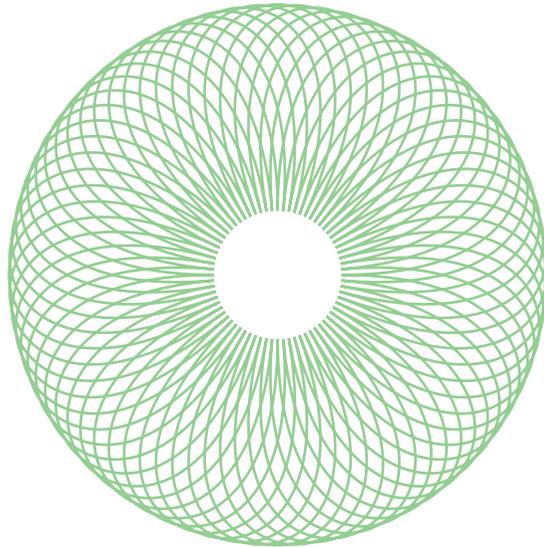
# citizens&markets
A TRANSPARENCIA MEXICANA INITIATIVE

This book was designed using **Integra**, a new typograhpy commissioned by
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**Integra** expresses the renassaince of essential values of Mexican culture:
the power of community and its thrive for holding public servants accountable.
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