



Wilton Park



Report

Leading by example: implementing Anti-Corruption Summit commitments on transparency in public procurement

Wednesday 14 – Friday 16 September 2016 | WP1502

In association with:



THE B TEAM





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The meeting will help government and civil society representatives from the participating countries to develop a better understanding of how to take the necessary next steps towards implementing commitments made at the Anti-Corruption Summit – with a view to enabling them to unlock domestic innovations and report back on progress at upcoming international fora. Other participants will gain a better understanding of how they can best contribute to supporting implementation of beneficial ownership transparency and open contracting within their own spheres of influence.

Intended outcomes:

- Connecting practitioners to each other for peer-learning and support, contributing to an emerging peer network
- Jointly identifying opportunities, challenges and strategies to implementing Anti-Corruption Summit commitments
- Sharing approaches, tools, and practices in anti-corruption open contracting, and beneficial ownership across countries, sectors, and projects
- Exchanging new ideas and concrete plans on how to accelerate and deepen implementation of commitments to beneficial ownership transparency and open contracting

Approach:

The meeting format will be collaborative and interactive. Participants should expect high levels of engagement throughout the sessions. We will invest in building relationships and creating new approaches in order to transform how public procurement delivers results for governments, business, and civil society.

Public contracting is the single biggest item of spending by government – amounting to an estimated \$9.5 trillion each year. This concentration of money, government discretion, and secrecy makes public contracting a government's number one corruption risk. Data on prosecutions tracked by the OECD Anti-Bribery Convention shows that 57% of bribes were paid to win public contracts. Fighting corruption is vital to delivering public benefit, such as roads, schools, and hospitals.

The Anti-Corruption Summit produced a high-level leaders' declaration against corruption, a

communiqué and 41 individual country statements including over 648 measurable commitments, as counted by Transparency International.¹ Pledges around beneficial ownership and public procurement made up over a quarter of these commitments.

The 'Leading by Example' workshop at Wilton Park, organised by Transparency International (TI), the Open Contracting Partnership (OCP) and the B Team, brought together government and civil society representatives from countries that made specific commitments at the Summit around fighting corruption through increased transparency in public procurement, open contracting and beneficial ownership. Countries in attendance were: Afghanistan, Argentina, Colombia, France, Italy, Kenya, Mexico, Nigeria, Ukraine and the United Kingdom. These representatives were joined by global experts, anti-corruption practitioners, business representatives, international civil society and representatives from multilateral organisations who are involved in increasing integrity and openness in public procurement. The intended outcomes of the workshop were to:

- Connect practitioners to each other for peer-learning and support, contributing to an emerging peer network
- Jointly identify opportunities, challenges, and strategies for implementing Anti-Corruption Summit commitments
- Share approaches, tools and practices in anti-corruption open contracting, and beneficial ownership across countries, sectors and projects
- Exchange new ideas and concrete plans on how to accelerate and deepen implementation of commitments to beneficial ownership transparency and open contracting

Context

1. Six countries, including Afghanistan, France, Kenya, Nigeria and the UK, committed to establishing public central registers of beneficial ownership. 14 countries, including Afghanistan, Argentina, Colombia, France, Italy, Mexico, Nigeria and the UK, committed to implementing the Open Contracting Data Standard.
2. Participants felt that global stakeholders are not doing their best to leverage generated data to help us understand corruption. Through multi-stakeholder initiatives like the Open Data Charter, which produced the Anti-Corruption Data Package, we are building examples of how open data can be used to tackle corruption. The C5 is a network of countries (Colombia, France, Mexico, the UK and Ukraine) seeking to effectively implement the Open Contracting Data Standard (OCDS) to eliminate corruption in public procurement processes. The C5 initiative helps gather country level learning, to be shared with other regions and nations.
3. This workshop was convened to be the first effort for international follow-up and constructive peer learning around the commitments generated by the Anti-Corruption Summit. At the workshop all country representatives developed plans for next steps on implementing their individual commitments.

Opportunities and assets

In the same groups, participants were asked to identify which opportunities and assets exist to help advance and implement the commitments. They were asked to report back three key opportunities and assets to the wider group.

4. Participants saw benefits to digital innovation and access to new technologies. As

¹ 43 countries, 600 commitments: Was the London Anti-Corruption Summit a success? (September 2016), http://www.transparency.org/news/feature/43_countries_600_commitments_was_the_london_anti_corruption_summit_a_success

governments recognise that they can use data to advance systems, improve efficiency and save money, the agenda for transparency can be easily incorporated in these new open data approaches. This data is increasingly a more effective tool; it is more open source and open access than before. When this new technology is combined with existing resources and knowledge, civic participation in the fight against corruption can increase. If all stakeholders are trained on using the most appropriate digital tools, tackling corruption should be significantly easier.

5. Although inconsistent coordination was a constraint, the possibility of stronger partnerships can only be an opportunity. Businesses in particular should be more welcomed into the anti-corruption movement; the resources and multijurisdictional nature of business means they may be able to match the influence of the corrupt in ways that governments and civil society cannot. As government, civil society and business – labelled the “golden triangle” – continue to work together to push reform, it will be easier to find champions in different sectors.
6. There is an opportunity to raise awareness of the risks and impacts of corruption. Corruption is further up the agenda than it has been historically, and we know more than ever before about how corruption works. The public is interested in service delivery, and this interest has the potential to motivate them to play a role in tackling corruption and promoting integrity. Our example sharing and storytelling is an opportunity for us all to learn about different approaches to solving problems in our own contexts.
7. The anti-corruption landscape is another asset. There are many laws in place that are already effective, and we are not starting from scratch. The momentum around anti-corruption, which led to the Summit, continues to swell. There are now more commitments to transparency and open government than ever before.

Challenges and constraints

Participants were broken into small groups and asked to consider the most critical challenges and constraints to advancing and implementing anti-corruption commitments in their contexts. They were asked to report back three key challenges or constraints to the wider group.

8. Participants identified some imbalances of knowledge or gaps in information as constraints to progressing their commitments related to transparency in open contracting and beneficial ownership. Lack of expertise in the history and complexity of corruption, as well as a lack of cultural understanding of corruption and a poor understanding of how corruption impacts daily lives, were highlighted as problematic by participants. Exaggerated and underestimated perceptions of corruption were also seen as hindrances to effectively tackling the problem.
9. In the face of a transparency drive, vested interests are often protected using arguments that focus on fear of change and loss of privacy. There is also a lack of incentives for information to be published proactively and truthfully. In addition, there is a heavy reliance on political champions for catalysing reform, rather than reforms being made simply because there is a social demand for it.
10. Participants felt that coordination and support between stakeholders could be improved. The varying transparency standards and beneficial ownership thresholds in different jurisdictions made it difficult to gain common understanding of what some of the Summit commitments meant.
11. The scale of corruption, as well as the extensive resources needed to tackle the phenomenon, represented a significant challenge to participants. Data on those suspected to be corrupt is frequently questioned on its consistency, veracity, and strength. Corrupt actors are likely to have overwhelming resources, whilst national government departments are all too often under-resourced. Corruption is also a cross-border phenomenon, whilst law enforcement agencies are still unable to

freely share information across those same borders.

Identifying sectoral challenges and opportunities

Participants were encouraged to understand the work in different sectors and industries, drawing on the previous discussions on general challenges and opportunities. Sectoral experts led four group discussions, on health, infrastructure, procurement and extractives. Each group addressed the key issues in tackling corruption in that sector at the national and subnational levels, as well as the leverage points to advance anti-corruption work in that area.

12. **Health.** The health sector was described as more complex and opaque than many other sectors, and there is potential for corrupt activity at numerous points. Conflicts of interest, lack of transparency and accountability of decision makers, and problems with contract assurance and counterfeits were the significant challenges to tackling corruption in the health sector according to participants. Leverages against these challenges include the use of open data and new technologies – publishing information on doctors and prescription data, integrating e-health systems, establishing digital tools – which would be of interest and benefit to all corners of the golden triangle. More data and transparency would increase accountability in the sector and increase efficiency at service delivery points. Introducing barcodes to authenticate medicines and eradicate counterfeits was also a potential leverage point. Although this may seem like a sector where business has more influence than government, participants from the health sector were keen to clarify that business will always be beholden to government, to a degree.
13. **Infrastructure.** A major challenge to tackling corruption in infrastructure projects is that the balance of risk depends on the size of the project, as small scale projects do not always have the same levels of scrutiny as larger ones. There are also challenges specific to different phases of infrastructure procurement. Prequalification and tender is at risk of price fixing, manipulation of prequalification and conceptualisation. At the planning stage, the manipulation of design is a real risk, and at the execution stage, inflated variations or obscuring defective work are also common risks. Poor supervision is the biggest risk at the maintenance phase. Leverages against these challenges are again centred around transparency; from having more beneficial ownership transparency to offer more information on who is bidding, to introducing transparency at the earliest stage in a project. There was also discussion of the opportunities of unbundling projects to avoid concentrations of money and decision-making power, noting that unbundling adds a new form of complexity. Participants also thought there were ways that the public sector could learn from the private sector, and could do more to reduce the complexity of large projects.
14. **Procurement and E-Procurement.** The biggest challenges to reducing corruption in procurement and e-procurement are sustainability, integration with other financial systems by government, and building procurement systems that are both fit for purpose and user-friendly. The Open Contracting Data Standard, which provides a schema that describes the data that should be published at all stages of the contracting process, is one option for gaining leverage. Transparency and multi-stakeholder involvement are other leverage points that should be used.
15. **Extractives.** Commercial confidentiality, asymmetry of power and knowledge, uncertainty about the risks and challenges of engaging in state owned enterprises, and the enormous scale of money coming in from extractive sectors are some of the major challenges in fighting corruption in the extractives sector. The Extractives Industry Transparency Initiative (EITI), a multi-stakeholder initiative with a focus on the disclosure of spending in extractives deals and frameworks, continues to expand and offer itself as leverage against these challenges. There is also a

breadth of international legislation and guidance, as well as existing best practice that we can learn from.

Lessons from others

Participants with experience of implementing open contracting and beneficial ownership transparency in their countries were invited to share their experience and case studies with others at the workshop, to help others draw relevant lessons from key issues.

16. **Budeshi**² is an attempt to demonstrate the OCDS across the public procurement value chain in Nigeria. As an OCDS platform this means the data does not only come from government. Budeshi demonstrates that it is sometimes best to develop tools outside of government, using civil society organisations that can be trusted to ensure that disclosed information is genuine and without amendments. The independence of the platform has enabled its owners the freedom to progress and develop it in the ways they see best fit. Government agencies are now proactively disclosing relevant information. Other countries, such as Uganda, Kenya and Malawi, are now looking to take the Budeshi model forward in their own countries.
17. **ProZorro**³ is a public e-procurement system in Ukraine. The central database system gives businesses access to government opportunities. Today, ProZorro has processed more than 200 tenders through its system, and is the most successful forum in Ukraine. It is now a state-owned enterprise, but has transferred licencing rights to Transparency International Ukraine. ProZorro strongly believe that competition is the route to success. There are now 9 different platforms connected to the central database, and now any international company can bid for government tenders.
18. **Slovakia** is the first system in Europe to have beneficial ownership information online. In Slovakia, the government is legally required to publish all contracts online, and a contract remains invalid until its publication. These contracts are searchable by features such as supplier or value of the contract, and as a result there is now one central website holding information for more than 3000 entities. Perceptions of corruption in the country have fallen as a result of this increased transparency.
19. **Digiwhist**⁴ - 'The Digital Whistleblower' - allows you to instantly identify the corresponding government contract, the construction company and the amount of public money involved in the contract. It aims to improve the efficiency of public spending across 35 European countries, and develops indicators measuring transparency, corruption risks and administrative quality. To start developing indicators, it is important to know what 'good' looks like; by mapping normal behaviour and working out how markets operate in different contexts. Indicators are not only there for anti-corruption purposes, but they can be incredibly useful in building good and strong institutions.

Cross-border insights

As well as lessons offered from country-specific endeavours, participants were invited to learn about the cross-border support initiatives and networks that are available. These insights complement the lessons learned from the country platforms that have been developed, offering an understanding of challenges that people from any country context may face.

20. Without seeing a contract it is difficult to ascertain whether it was awarded fairly. At

² Budeshi, <http://www.budeshi.org/>

³ ProZorro, <https://prozorro.gov.ua/en/>

⁴ Digiwhist, <http://digiwhist.eu/>

the Anti-Corruption Summit, all participants agreed that information on public procurement should be open by default. Yet there may be legitimate concerns as to why things cannot be published, and there is a real question over whether disclosure may cause 'harm'. In addition, there is a risk that sharing intellectual property as a result of disclosure may in fact stifle innovation and slow down development in many sectors. But there are cases where commercial confidentiality has not been a stumbling block for open contracting. In Ukraine all contracts are published unless they pose a risk to national security. In Slovakia, contracts remain invalid unless they are published.

21. There is a real lack of transparency over who owns the companies that are so often involved in public procurement. One of the many challenges here is that the definition of the beneficial owner is inconsistent across jurisdictions. Another challenge is that it is difficult to verify that the published information is accurate. It is more important than ever to use international processes, such as the Open Government Partnership and open contracting, to encourage openness and embed it in legislation. Beyond these processes, it is also important that we get society more involved in the cause for beneficial ownership transparency.
22. The B Team has worked to directly involve the private sector in reforms, by working with high profile business leaders to publicly and privately state why they want access to information from a business perspective. They have also started to build greater understanding and support through business communities, as well as supporting those companies who have been willing to show they are leading by example. Finally, they have participated in creating infrastructure that will make information more usable, such as the Global Beneficial Ownership Register (along with civil society organisations).

Approaches and tools

23. Open contracting is an approach that uses open data and better engagement so that citizens, government and business can work together. At the core is the Open Contracting Data Standard, a schema that provides open data for the full government contracting process from planning to tendering to performance and closure. The OCP has found that open contracting tools work best when built around concrete use cases such as creating value for money, developing a fairer marketplace for business, improving public integrity and reducing corruption, and providing better quality goods and services for citizen. The OCP sees open contracting not as a destination but as a journey to continuously improve data disclosure and developing effective feedback mechanism. It is beneficial to embed open contracting into systematic reforms as they are being built.
24. The Contracting 5, or C5, was established at the Anti-Corruption Summit by Colombia, France, Mexico, the UK and Ukraine. The C5 will work to implement the Open Contracting Data Standard, and plans to continue promoting peer learning and tool sharing. The C5 plans to make an announcement at the Open Government Partnership Global Summit in Paris in December 2016.
25. Integrity Pacts are a tool for preventing corruption in public procurement. They consolidate the relationship between a public sector entity that is contracting, a business that is bidding and civil society that are monitoring. The Integrity Pacts are a way that civil society can contribute to solutions rather than simply pointing out problems in public procurement. Transparency International has received funding from the European Commission to roll out Integrity Pacts in EU countries.
26. The Global Beneficial Ownership Register will seek to aggregate data from multiple existing sources – such as the Extractives Industry Transparency Initiative, national registers, and government procurement systems – to make collated data available to everyone. The Register will be a useful tool for law enforcement

authorities, tax authorities, companies, consumers, journalists, employees, the finance industry, anti-corruption organisations, and procurement experts. The Register aims to make it as easy as possible for companies to self-report, and its developers want to reach a point where it is the norm for companies to disclose information.

27. The Construction Sector Transparency Initiative (CoST) is supporting governments to disclose information into the public realm, emphasising the message that the more information you give to the public increases the accountability and ultimately achieve better value for money. CoST is working closely with the OCP to ensure that the Infrastructure Data Standards and the OCDS are aligned.
28. The Open Government Partnership (OGP) is designed to bring government and citizens together to work on a range of open government reforms, to create and develop National Action Plans (NAPs) which last two years. On the national level, action plans enable civil society to raise their government's ambition in the reforms. The action plans are concrete, setting out who is doing what, by when, and what are the milestones we should be looking out for. On the international level, the OGP seeks to translate communiqués like that of the Anti-Corruption Summit⁵ into action on the national level. The OGP provides a platform for exchanging expertise and encouraging government and civil society to come together to push similar reforms in their varying countries.

Next steps

29. Though there is no formal follow-up or implementation process to the Anti-Corruption Summit, both the G7 and G20 leaders' summits welcomed and endorsed the commitments made in London. The OECD has offered to host an Anti-Corruption Centre, and the 2016 Open Government Partnership Global Summit in Paris will be another opportunity for governments to showcase their progress on their anti-corruption promises. Leaders who were at the Anti-Corruption Summit will meet again at the United Nations General Assembly in September 2017 to discuss the progress that they have made on their commitments. Transparency International will be monitoring the global progress ahead of that meeting.
30. From 7 – 9 December 2016, the OGP will host their Global Summit in Paris, France. The C5 will announce their plans for the coming months, and non-C5 countries will have an opportunity to engage further with the partnership and their agenda. The OGP Summit will be an opportunity for follow up with participants who took part in this workshop, as the majority of countries represented are also OGP members. In addition, the OGP Summit will be looking at the broader commitments made at the Anti-Corruption Summit and work with countries represented there to make concrete plans to implement those promises. OGP members can also seek to have their Summit commitments embedded in their upcoming NAPs.
31. Seven of the 10 countries represented at the workshop made commitments to implement the Open Contracting Data Standard, many of them promising to focus on major projects as an early priority. OCP has an Open Contracting Data Standard Help Desk, which will offer support to those countries and any others who intend on implementing the Open Contracting Data Standard.
32. An Anti-Corruption Open Data Package was planned to be launched at the International Open Data Conference in Madrid in October. Those that have developed the package encouraged others to use it, as tools continue to be gathered to promote the use of open data to tackle corruption.

⁵ Anti-Corruption Summit Communiqué (May 2016), <https://www.gov.uk/government/publications/anti-corruption-summit-communication>

33. Regional alliances were formed at the workshop around open contracting and public procurement. Participants from Latin America spoke about the potential of creating a regional open government group for Latin America, and our African representatives spoke about possibly creating an African movement or alliance on the issue.
34. TI, OCP and the B Team remain available to support participants in implementing their commitments and introducing these reforms.

Closing observations and global lessons

35. Throughout the workshop the issue of data quality continued to come up. Participants strongly felt that for open data approaches to be effective, the data needs to be high-quality. In the context of open contracting this means that public contracting must be clearly structured and as simplified as possible. Some countries represented at the workshop were already making progress in simplifying the structures of their public contracting process, and were willing to share intelligence with others on how they were going about the process.
36. As well as making systematic reforms, participants must also focus on achieving behavioural change in organisations and across sectors.
37. Whilst all participants agreed on the strength of being able to share the benefits of promoting integrity in public procurement, it was suggested that those success stories should not only be about reducing corruption but should also include stories from the private sector on how open contracting impacts businesses for the better.
38. For effective progress on open contracting, beneficial ownership transparency and public procurement, businesses can and should work more closely with governments. Experts from different sectors and representatives from around the world should be brought into implementation to see how lessons learned from one context can be shared with others. Cooperation across stakeholders is central to proper implementation, and participants were encouraged to stay in touch with one another and take advantage of the relationships built at the workshop.

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