Civil Monitoring of Public Procurement Workshop

Evaluation Report

29 July 2016, Oficina, Tirana, Albania

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Evaluation Report

Summary of findings

Countries represented in the workshop included Albania (host country with several organizations involved in the event), Bosnia and Herzegovina, Kosovo, FYROM, Montenegro, and Romania. Based on the participants' presentation, it became clear that the institutional framework varies from one country to another; however, there are similarities as well. Every country has a central procurement body, a procurement regulatory body, and an audit or review board. Problems faced in all countries are very similar and they stem from a seemingly inherent lack of transparency within public institutions.

Governments in the region are formally committed to OGP, but not all of them are progressing at the same pace in embracing standards of openness. Even when they engage in publishing data, they are not always aligned with these standards.

The format use to publish procurement and contract data is not easy to process, user-friendly, or machine-readable. Government portals usually lack appropriate filters of information, are not easily navigable by common citizens, and might produce different results on automated and manual searches.

In all countries of the region, it is civil society organizations that are at the forefront of open data / open procurement initiatives.

Legislative framework differs between countries. Free access to information laws exist in all countries, but the degree to which access is granted differs (with Romania and Kosovo being better off). However, EU integration aspirations also imply that national legislation needs to be aligned with that of the Union. This process could be used to advocate/lobby for relevant legislative amendments.

Future initiatives should make use of technological tools for increasing awareness, transparency and involving the public. Messages should be better designed and communicated to the public.

Documentation of discussions

The event was opened by a welcome note from Mrs. Julia Hoxha, (AIS), which was followed by an introduction of all participants. Immediately after, Mrs. Hoxha announced the "Speed Geeking" rounds.

In two rounds, the hosts, four for each round, faced four different groups of participants, and discussed the situation in their home countries regarding open procurement and open data in general.

A summary of the discussions for each host in both rounds is presented below.

Round I

- Eva Meqemeja (AIS) – presented Open Procurement Albania and compared its data presentation format to that of the Public Procurement Agency, whose site and search filters are more often than not unusable or outdated. During 2015, the Agency published 51 bulletins. Their format is not machine-readable. A manual search of each bulletin has to be performed in order to locate a specific data/piece of content. Open Procurement Albania transforms data to machine-readable formats, allowing easy searchability of information.
- Eugena Topi (ACER) – talked about public procurement in the energy sector in Albania. She mentioned that procurement in this sector is characterized by a severe lack of transparency. Procurement notices are not published online; in several cases non-competitive procedures are applied (such as emergency procedures); there is inconsistency in the information published by state institutions; a lack of political will is noticed when it comes to change this situation. Moreover, there are no organizations that focus specifically on monitoring procurements in this sector.
- Artan Canhasi (KDI) – talked about all actors involved in public procurement in Kosovo; they include 170 contracting authorities, a central Public Procurement Agency, a regulatory body for procurement (Public Procurement Regulatory Commission, PPRC), and a procurement review body. The PPRC oversees implementation of procurement legislation, proposes and drafts

secondary legislation, and maintains a database of all public procurement. Tender announcements are public, but tendering dossiers and contracts are not – they can only be accessed through on official request based on the right of access to public documents. Filing of tender documentation is very chaotic and this creates problems in retrieving documents. Particularly because all procedures are still paper based. Migration to electronic formats has begun, but it is still long before its completion.

Accountability is also problematic, because the complex ecosystem makes it difficult to understand which institution is in charge. PPRC has very limited capacities.

KDI has had a monitoring role and has provided recommendations at local and central level. Its involvement has touched upon four out of the five procurement stages (I. planning to V. auditing).

- Driart Elshani (Riinvest) – made a case about the need to publish tender budget information, in order to avoid favoring companies that might acquire insider information on the bidding ceiling. It was noted that certain companies are "frequent tender winners", which seems highly suspicious given that negotiated procedures are supposed to be limited. Moreover, there seems to be abuse with the extension of contract terms, and additional funds, whose maximum should, by law, not exceed 10% of the contract original value.

  Furthermore, there should be a prioritization of criteria for evaluation of bids that reflects the principle that a tender should not be granted to the cheapest bid, but rather to the bid with the highest social responsibility.

Round II

- Ana Durnic (Insitut Alternativa) – described the situation with the two public procurement portals managed by the Public Procurement Agency in Montenegro. In May 2015 the legislation was amended making obligatory publishing of tender documentation. So, instead of improving the procurement portal created in 2012, a new portal was created, and the two are now simultaneously active but contain only partial data.

- Bardhyl Jashari (Metamorphosis Macedonia) – raised the question on how electronic systems can increase transparency. There is a procurement system in place in FYROM, however openness of procurement data faces the same problems as in other countries in the region. The system exists since 2009, and its use is mandatory, but data it generates is hardly usable (or reusable). Metamorphosis downloaded the entire public procurement database and created a new tool for searching and using information. This brought to surface many inconsistencies. Data on contracts are not available online. Users interested in such data may resort to the law on access to public documents, whose implementation is not effective, and such attempts result useless.

As a final remark, Jashari pointed out that the problem is not the quality of the current legislation, but its implementation. Corruption remains very high.

- Elvira Mujkic (TI BiH) – talked about Transparency International's work in Bosnia and Herzegovina. A coalition of NGOs is pushing for open data through the OGP Initiative and the related Action Plan. So far they have achieved the adoption of one amendment in the law related to publishing of procurement plans and reports, but the amendment on conflict of interest and on transparency has proved more challenging. There are two institutions that monitor the situation: Public Procurement Agency and the Agency Responsible for E-procurement. An issue arising in the country is linked to the fact that there are no bodies responsible for dealing with appeals regarding public procurements.

- Mircea Serdin (Initiativa Romania) – presented the app his organization has created (currently, app and web version are in beta testing). Raw data was obtained from public records and cleaned up by data analysts. All the work was done on voluntary basis. The creation of the app was possible due to availability of data (easily accessible due to a good Freedom of Information Act. However, data obtained was very inconsistent.

Panel presentations followed.

1. Ana Durnic, Institute Alternative, Montenegro

   It is imperative to improve the quality of legislation through provision of recommendations, as well as improve its implementation.

   The presentation talked about the different types of procurement that are possible under Montenegrin law and about the institutional framework under which they take place. In December 2014, a number of amendments related to transparency were adopted; they entered into force in May 2015 and introduced the obligation of publishing tender documentation. At this time, instead of improving functionalities of the public procurement portal that had been created in 2012, an entirely new portal was created. Both portals are being used in parallel and their data is not merged. Neither of them provides data that is open, easy searchable or even machine-readable.

   The old portal allowed visitors to search its data only if they registered as bidders even though they were simple citizens. This created a fictional list of bidders. In the new portal, this has been addressed. However, manual and advanced search produce different results, providing proof of inconsistencies in the way information is recorded.

   Main problems of the system are the unreliability of information provided by competent authorities, lack of standardized names for documents, discrepancies in report sheet of individual procurement contracts vs. annual reports of the Public Procurement Agency. It also happens that

the Public Procurement Agency conceals misdemeanors of contracting authorities, or that it doesn't enforce sanctions when contracting authorities do not submit their reports on time.

2. Eugena Topi, Albania Center for Economic Research - ACER, Albania

    Public Procurement in the energy sector in Albania faces four main challenges: (i) transparency challenges, (ii) competition restrictions, (iii) exclusivity issues, and (iv) concentration of public procurement funds.

    Transparency challenges are a result of the lack of energy specific data on public procurement, which make comparisons impossible. Competition restrictions and use of non-competitive forms of procurement are typical red flags for potentially corruptive cases. The same could be said for those tender calls that impose very specific/exclusive criteria to favor certain companies. Furthermore, some energy tenders are implemented outside the general procurement procedures (i.e. extraordinary procedures, or procedures for projects implemented in a country but funded in full by international donors). Lack of proper in-house audit and M&E of public procurement are potential enablers of competition restriction practices.

3. Elvira Mujkic, Transparency International Bosnia and Herzegovina, BiH

    Transparency International is contributing to the improvement of public procurement in Bosnia and Herczgovina through several actions, including:

    - Analysis and recommendation from improving the legal framework (amendment on publishing of procurement plans and reports was adopted; still working on the amendment of conflict of interest);
    - Cooperation and strengthening of capacities of NGOs and institutions through trainings, study visits, partnership with TI Czech Republic and other "public procurement professional tandems".

    At the moment, TI BiH is involved with monitoring contracting in public enterprises and creating a database of contracts of public institutions. Also, they have been engaged in conducting trainings with the media and citizens on how to access data.

4. Driart Elshani, Riinvest, Kosovo

    Public procurement in Kosovo is based on EU law. It is characterized by limited transparency. Only public procurement reports, not data sets, are publicly available.

    Public procurement in Kosovo is not centralized: each institution conducts its own.

    The institutional framework around procurement includes the Public Procurement Regulatory Commission, the Procurement Review Body and the Central Procurement Agency.

Electronic public procurement is in its early stages. However, PPRC has a website where all contracts and notifications are posted, but data is limited. All meaningful information has to be extracted manually.

In fact, as far as public procurement is concerned, there is no adherence to open data/open contracting in Kosovo. Data sets are unavailable; information on public contracts is superficial (missing core elements). There are considerable transparency gaps and a great need for advocacy and awareness regarding open contracting.

5. Mircea Serdin, Initiativa Romania, Romania

   Following the aftermath of a fire accident in a nightclub in Bucharest that left 45 dead, citizens took to the streets to protest against pervasive corruption that has plagued the Romanian society. Inspired by these events, Initiativa Romania, a grass root civic movement, was created.

   Initiativa Romania uses gaming principles to get people interested in open data. The organization, which works on voluntary basis, gathered the bulk of procurement data, which is made available by the government. Data is easily accessible, but is not validated. A team of data analysts cleaned up the data and developers used it to build an app, which allows users to navigate the streets of Bucharest and dig into procurement information of all public institutions they come along in the map.

   In order to detect "sketchy" contracts, the developers are thinking to use pure gaming strategies. App users can register as "contract hunters" and flag suspicious contracts to earn more points.

6. Blinera Meta, Open Data Kosovo, Kosovo

   Open Data Kosovo has created a portal (www.e-prokurimi.org) with the mission of displaying and publicizing municipal procurement data, with the aim of tackling two major issues: lack of transparency and lack of accountability. Additionally, another main goal of this process was to build a tech community. Thus workshops with youngsters and students were organized to analyze data sets provided by 6 municipalities and build the platform. Open Data Kosovo had a quality assurance role in the process. One of the key features of e-prokurimi.org is the algorithm for red flags, created by the developers of the platform in collaboration with auditors and based on the World Bank standards. The algorithm can be shared with interested parties.

7. Artan Canhasi, Kosova Democratic Institute – KDI, Kosovo

   KDI has developed a Transparency Index on Public Procurement for municipalities in Kosovo. The index is a composite of 17 indicators grouped in four pillars: access to public documents, budgetary transparency, procurement transparency, and public auctions. The methodology was entirely developed by KDI. Indicators were selected after a screening process of what type of data is available, and many

rounds of testing and scoping. Some indicators, such as public access to information, cannot be independently verifiable.

Additionally, KDI is also involved in monitoring of public procurement, which results in drafting in-depth reports. Three cases were presented: the report on the procurement of snow cleaning vehicles, procurement in the Ministry of Health, and procurement of consumables (petrol, toilet paper, etc.) conducted centrally by CPA for 170 contracting authorities. The selection of cases to monitor is based on the organization's own evaluation on what could be more problematic, and the respective risk level.

Evaluators' note: Selection of monitoring cases needs to be done in accordance with preset indicators. It also should be in line with the methodology. A strong methodology leads to strong results and prevents potential criticism on the selection of cases.

8. Shefiko Hajna, AIS, Albania

Open Procurement Albania is a portal that aims at providing transparent and easy-to-find information on tenders and public contracts in the 61 municipalities of Albania. It produces a "Tender passport", hyperlinked to the information about economic operators that was awarded a given tender. Tender data featured in the portal is updated chronologically and covers information from the tender notice to the finalization of the contract. The data featured in the database is in an open format (data is converted in JSON and is also exportable to excel). The creation of the database was done according to the Open Contracting Standard, and allows real-time monitoring of tenders and contracting.

The key feature that distinguishes Open Data Albania and Open Procurement Albania is the filtering options.

A red flagging mechanism that indexes municipalities' tenders as possibly corruptive will be applied starting from January 2017. As of September 2016, Open Procurement for tenders in the health sector will be added.

Coverage of Open Procurement Albania in the media has been extensive.

Working Groups – Contract Data Usability

The next section of the workshop was organized in a group setting. Participants were split in four groups, acting as investigative journalists, auditors, business companies, and NGO staff working on data transparency issues. Each group analyzed a bulk of information related to a generic tender, and

tried to identify: a) which elements were more relevant from their perspective, b) how to use that information, and/or c) how to obtain it if not easily available.

a. Journalists found that it was important for them to look at specific documents of a tender and not only at the standard tendering contract.
b. Auditors needed to have access to all bits of information, but their particular attention was devoted to red flags, such as having too detailed specifications (cause for favoritism) or having excessively long / short tendering procedures.
c. Business companies were concerned with information regarding timeline, as they wanted to make sure to meet deadlines. They also required information on market prices and profiling competitors, in order to scan competition and "calibrate" their bid. Their potential pitfall is that in trying to obtain business intelligence information, they might end up using open data in a proprietary way.
d. NGO representatives focused on the contracting time and respecting of start and end data, on whether there would be cases of "frequent tender winners", on award documents, contracting amount, network of suppliers, and contract termination provisions.

Open Contracting Partnership – Governments engaged in Open Standard, OGP Action Plans

Next, the group discussed with Mr. Georg Neumann, from Open Contracting Partnership and Besjana Hysa (AIS, CSOs Coalition on OGP Albania), on Open Contracting Partnership (OCP) and Open Government Partnership (OGP). His presentation focused on the four cases of use of open data in public contracting (value for money, detecting fraud and corruption, competing for public contracts, and monitoring service delivery).

Mr. Neumann noted that Public Private Partnerships are types of collaborations for which much more information can be unlocked and which are particularly relevant to Albania. The line ministry responsible to coordinate PPPs is the Ministry of Economic Development, Tourism, Trade and Entrepreneurship. This ministry has also the authority to decide how open the information on PPPs will be[1].

It is of paramount importance to engage the private sector in monitoring and advocating for open procurement data

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[1] MEDTTE plans to publish data on current PPPs within the end of 2016.

AIS, as a member of the coalition for OGP Albania, has proposed open contracting standards to the Government of Albania, which is considering it for the new OGP Action Plan (2016-2017; currently in consultation). The OGP Coalition is composed of AIS, IDM, Mjaft and two organizations in Vlora and Shkodra. There is, at the same time, a working group established by the Government, which met in June 2016.

A dual evaluation system was discussed, with evaluations being conducted by (i) experts; and (ii) self-evaluation by the government.

One of the weak aspects in Albania is the frail link between civil society organizations and Government, which usually prefers to collaborate with international experts rather than local ones.

In Montenegro, NGOs represent a minority in the OGP team, which is currently facing some technical problems as well. The OGP Action Plan has not been adopted yet; nevertheless, it was used to justify a paradoxical decree issued by the government which promised to lower the cost of access to information, but which effectively raises the price.

In Bosnia and Herzegovina, the first OGP Action Plan is being currently drafted, but its scope is not particularly ambitious.

Kosovo is not formally part of the OGP initiative; however, the government decided to unilaterally adopt and implement an action plan resembling OGP standards.

Evaluators' Observations

Open data is seen as a tool to fight corruption by increasing governments' accountability and transparency. It also empowers citizens to make governments accountable, and organizations, businesses, and other stakeholders to follow processes that directly and indirectly impact the quality of life in their countries.

In this ambit, the Civil Monitoring of Public Procurement Workshop is seen as an interesting space where stakeholders from South East European countries, actively engaged in open data and the fight against corruption, gathered to exchange best practices and learn from the developments in other countries.

The level of experience brought by participants was very apt to the purpose of the event. All representatives and their respective organizations are directly involved in Open Data / Contracting / Procurement in their home countries. They provided first-hand experience to the discussion and

contributed to a comparative analysis on Open Procurement practices among the participating countries.

Working Groups and Speed Geeking were effective ways to facilitate friendly and constructive interaction among participants.

It was noted that participants from outside Albania included only civil society organizations, while from Albania there were also representatives coming from the Supreme State Audit. The Evaluators would encourage including representatives from state institutions to other similar events so that the debate can benefit seen from all standpoints.

In the last part of the workshop participants were welcomed to discuss possible ways of collaboration. This is an important aspect; as such initiatives should become sustainable. However, to enhance the efficiency of the workshop, participants should have been invited to reflect upon and share preliminary ideas about possible collaborations prior to the event.

Recommendations

<u>National level</u>

- Civil society organizations/NGOs should maintain their momentum and efforts in promoting open data/open contracting. It is important to promote best cases rather than reproaching. Results will be more effective if the challenge to embark upon open standards is presented in a positive light.
- NGOs engaged with Open Data/Contracting/Procurement need to be part of working groups or discussion on legislative changes that deal with openness standards and transparency in order to make sure that their recommendations are integrated in legislative amendments. Alongside their watchdog and whistle blowing roles, these organizations should strive to impact the strategic view on open data.
- Focus should be placed on building communities and involving other actors. This includes expanding the involvement of citizens, but also finding new partners, such as the business community, academia and other donors engaged in programs focused on the fight against corruption.
    - o The business community (business organizations, associations, etc.) is directly impacted by unfair procurement / tendering procedures. They have (i) specialized staff that works on preparing tender documentation, who know the process from their own experience,

and (ii) monetary resources, to support initiatives that increase the transparency of procurement systems.

- Following Initiativa Romania's gaming principles to get people interested in open data, as an innovative way to engage citizens towards making governments accountable, and taking into account the level of penetration of ICT in SEE countries, it is advisable to use similar principles not only addressed to citizens, but to more specialized audiences as well, such as businesses, academics, and international organizations and donors involved in the fight against corruption.
- A potential future move could be towards Open Corporate Data.

<u>Regional Level</u>

- It is of utmost importance to increase regional cooperation, share knowledge and tools. Countries should build on each other's strengths and advance their results. Some ideas/products that can be shared immediately after this workshop include the algorithm for red flags developed by Open Data Kosovo and AIS red flag mechanism, the code for Initiativa Romania's application and transposing of KDI's methodology for a regional transparency index.
- It is also essential to find synergies with ongoing regional processes. Many of the issues revolving around open standards can only be successfully if tackled at a political level. The EU integration process and Western Balkan process could be used for more impactful lobbying.
- Participating organizations, which are active in Open Data/Contracting/Procurement, should take advantage of their countries' underdeveloped OGP practices, and organize in-country and regional networks to serve as pressure means for moving the OGP agenda forward.
- SEE Open Government Partnership Network is a good example of how active organizations in South East Europe are collaborating to develop a network and an index for measuring openness of procurement / contracting / data on country and regional level.

Annexes

I. List of Participants

No	Name	Surname	Email	Country	Organization
1	Aida	GJIKA	aidagjika@yahoo.com	Albania	Faculty of Economy. University of Tirana
2	Ana	DURNIC	ana@institut-alternativa.org	Montenegro	Institute Alternative
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II. Agenda

ALBANIAN INSTITUTE of SCIENCE

NED

CIVIL MONITORING OF PUBLIC PROCUREMENT
Workshop Agenda 28 - 29 July 2016, Tirana Albania

July 28, 2016	Event Place : **AIS Office** (My Office'AL - Rr. "Asim Vokshi" Pll 13/25 k3)
Time	**Session**
19:00	Welcoming Event
20:00	Dinner

July 29, 2016	Event Place: **Officina** (Rr."Asim Vokshi" Building 10 Inside 'Harry T. Fultz' Institute)
8:45	Registration
9:00-9:30	Opening Remarks
9:30 - 11:00	Presentation of Participants and Speed Geeking: Different Procurement Systems in Region
11:00-13:00	**EXPERIENCES OF MONITORING OF PROCUREMENT BY CSOs IN REGIONE** Institute ALTERNATIVA Montenegro- *Ana DURIC*; ACER, Albania – *Eugena TOPI*; Riinvest Kosova – *Driart ELSHANI*; TI BiH – *Elvira MUJKIC*; Initiativa ROMANIA – *Mircea SERDIN*; Open Data Kosovo – *Blinera META*; AIS/ Open procurement Albania - *Aranita BRAHAJ*.
13:00 - 14:30	**LUNCH**
14:30 - 15:40	**WORKING GROUPS – CONTRACTING DATA USABILITY** Find, Open and Use Public Contracting Data
15:40 - 16:00	COFFE BREAK
16:00 - 16:40	**Open Contracting Partnership – Governments engaged for Open Standard, OGP Action Plans**
16:40-17:20	Discussions. Situation and What Next?! Regional Cooperation
17:20 - 18:15	**CONCLUSIONS AND RECOMMENDATIONS - EVALUATION GROUP**
	Dinner