



**THEMATIC REGIONAL REPORT:
Preventing Corruption in Public Works, Government
Contracting and Procurement**





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Summary

Preventing Corruption in Public Works, Government Contracting and Procurement is a structural factor for institutional strengthening and the building of trust-based relationships between the State and its citizens. This is why contract management, understood as a means to guarantee citizens' rights and a vehicle for national development, requires government compliance with the highest standards of transparency and integrity.

The above was ratified at the VIII Summit of the Americas held in 2018 in Lima, Peru, which is why the Citizen Corruption Observatory (CCO) took the initiative to follow up on its implementation. Through the participation of nearly 150 social organizations from 19 countries in the region, an exercise was carried out to prioritize and assess progress in order to strengthen the participation of civil society in the follow-up of the commitments made at the Summit of the Americas.

This report addresses the central elements of the actions taken in the region and the existing challenges for *Preventing Corruption in Public Works, Government Contracting and Procurement*. The findings of the assessment of commitments No. 27 and No. 29, which address the promotion of digital systems for government procurement and the inclusion of anti-corruption clauses in all contracts as necessary measures to prevent corruption and control government contracting, are the starting point for this analysis. These prioritized commitments were analyzed within the framework of the "Citizen Corruption Observatory (CCO) - Follow-up to the Lima Agreement", during a period of time in which the contracting and procurement of goods and services to address the Covid-19 pandemic was a common element for the region.



Introduction

Through the Citizen Forum of the Americas (CFA), we have sought to strengthen Civil Society (CS) meeting and dialogue spaces to address the social, political and economic realities that impact the region in order to create shared agendas to strengthen democracies, guarantee human dignity, and improve the quality of life in the continent (Citizen Forum of the Americas, 2021).

In the framework of this initiative, the “Citizen Corruption Observatory (CCO) - Follow-up on the Lima Agreement” project was launched with the purpose of strengthening the CFA through the co-creation, alongside the Latin American and Caribbean Network for Democracy (REDLAD) and the Chapters of Transparency International in the region, of an observatory that provides technical support to the implementation of the Civil Society Participation in the Summit of the Americas (PASCA, by its Spanish initials) project.

The CCO consists of a coalition of civil society organizations and social actors from 19 countries in the Americas, which have jointly followed up in compliance with the agreements adopted by the governments of the region at the VIII Summit of the Americas held in 2018 in Lima, Peru.

As a result of this Summit, the countries signed the Lima Agreement “Democratic Governance against Corruption”, which includes 57 commitments regarding the adoption and progress of measures to fight corruption in the region. These commitments, which the CFA actively participated in defining, acknowledge that preventing and combating corruption is fundamental to strengthening democracy in the region and that corruption has a negative impact on institutions, public trust, and the full enjoyment of human rights. In this sense, several of the actions included in the Lima Agreement reaffirm the agreements made by the governments of the region in the framework of other international treaties against corruption, such as the United Nations Convention against Corruption (UNCAC) and the Inter-American Convention against Corruption (IACAC).

In order to follow up on the progress made by civil society in the fulfillment of these commitments between November 2020 and June 2021, over 150 social organizations participating in the CCO (several of which are also part of the CFA)¹ implemented a participatory methodology that made it possible, on one hand, to select specific commitments for follow-up and, on the other, to deploy a process of analysis and validation of the progress made in both policy and practical terms.

¹ For more information on the CFA’s participating organizations, please visit the following website: <https://forociudadanoamericas.org/foro-ciudadano-de-las-americas/>



Regarding commitment prioritization, in a participatory and concerted manner, 19 commitments were selected on the basis of four analysis criteria: sustainability, inclusion of new approaches, vulnerable groups, and representativeness.

The methodology for monitoring and analyzing the progress of the prioritized commitments consisted of examining existing policy frameworks in each of the 19 CCO countries and contrasting them with their practical implementation. This analysis was supplemented by an assessment of the progress of each commitment in terms of sustainability, effectiveness and relevance.

Table 1. Overview of Indicators and Sources of Reference

POLICY INDICATORS		PRACTICE INDICATORS
Overview	Policy indicators reflect the legislation in force that regulates the issues covered by the commitments of the Lima Agreement Summit.	Practice indicators are specific actions or measures taken by each government in response to the anti-corruption commitments undertaken or reiterated during the VIII Lima Summit.
Sources of reference	For these indicators, the standards, relevant case law, and the Constitution of each country were reviewed through 74 questions that inquired about progress on each prioritized commitment.	The analysis from a practical application perspective is based on verification sources, such as interviews, reports on compliance with anti-corruption commitments, requests for information, media reports, among others. A total of 64 questions were asked about the practical progress of the prioritized commitments.

Source: CCO, Lima Agreement Follow-up Methodology (2021).

Based on this analysis, a report was prepared in each country that includes the results of the follow-up to the Lima Agreement. Two regional reports were also prepared, one on the balance of the policy framework in Latin America to address corruption and the other on the general findings of the follow-up to the Lima Agreement².

² Both country and regional reports are available on the CCO website. See: <https://occ-america.com/#>





To supplement this process, through a process of consultation with the CFA organizations, five specific topics were defined to be analyzed in greater detail, based on the results of the CCO's follow-up to the Lima Agreement:

1. Access to public information in the context of a pandemic
2. Public procurement in the context of a pandemic
3. International legal cooperation in investigations and proceedings related to crimes of corruption, money laundering, bribery and transnational bribery
4. Gender approach in the fight against corruption
5. Fight against corruption with a focus on human rights and the inclusion of vulnerable groups

These issues seek to contribute to the challenges and needs for transformation and progress in the region highlighted by the CFA, in terms of “gender, non-discrimination, respect for the territories and culture of indigenous peoples, and the true and effective commitment States must show to address challenges such as the Covid-19 pandemic and the climate crisis” (Citizen Forum of the Americas, 2021).

In particular, this report focuses on the progress and compliance with actions for Preventing Corruption in Public Works, Government Contracting, and Procurement based on the assessment made in the 19 countries of commitments No. 27 “Promoting the use of digital systems for government procurement and contracting of services and public works, to ensure disclosure, transparency, citizen oversight, and effective accountability” and No. 29 “Promoting the inclusion of anti-corruption clauses in all state and public-private-partnership contracts and establishing registers of natural and legal persons involved in acts of corruption and money laundering with a view to ensuring that they are not contracted”.

This analysis is supplemented by the recommendations made by the Organization for Economic Cooperation and Development (OECD), Transparency International, and the Open Contracting Partnership.



1. Preventing Corruption in Public Works, Government Contracting and Procurement.

Government contracting is one of the most important governmental processes in administrative and governmental management, as it is one of the primary means to guarantee the provision of goods and services in compliance with citizens' rights, improving the country's development levels, providing social services, and complying with legal mandates. Considering that government procurement involves the administration of resources, mainly generated by taxpayers, it is essential that management thereof complies with the highest standards of transparency, accountability, and public oversight, as well as the assurance of the prevalence of the general interest over private interests.

Government contracting is one of the state processes most at risk of being compromised by corruption. In fact, different analyses carried out by the Open Contracting Partnership - OCP³ have identified corruption risks at each stage of the contracting process, generated in part by the abuse of power by public officials in their personal capacity and the structural weaknesses of the government administration.

Part of the corruption associated with contracting occurs in the form of bribes received by public officials to influence the definition of terms of reference for contracting, in the selection of suppliers, in supervisory functions and/or other procedures involved in government procurement. The chain of administrative decisions and actions in contracting can generate incentives for public officials to abuse their power or take advantage of the opportunity to take personal advantage of the administration of government resources.

However, corruption associated with contracting is not merely confined to bribes received by individual officials to influence the management of contracts. Corruption in government procurement is also related to complex networks of economic and political interests, which make it a systemic problem of institutional reach. Trading electoral favors, manipulating selection processes to promote particular economic or political interests, as well as the discretionary nature of contracting, are expressions of the systemic corruption related to government procurement.

In some cases, clientelism related to contracting occurs at a local level and, in others, at a national level; moreover, the evolution of systemic corruption associated with contracting has led to the consolidation of complex networks that cross national borders. For example, the Odebrecht case exposed a sophisticated transnational network of Latin American corruption that made the contracting of major national infrastructure projects conditional

³ See more at: <https://www.open-contracting.org/es/>



on the support and financing of political leaders and parties by powerful multinational economic interests.

Thus, the conclusion of unnecessary contracts, the selection of incompetent suppliers, price fraud, and the renegotiation of costs and advances are not only attributable to the bribery of public officials, but also to a sophisticated plan involving electoral and economic interests, with the aggravating factor that this systemic corruption associated with government contracting ceased to have a local or national scope and became a transnational modality.

This situation has generated a complex vicious circle that is rapidly deteriorating public administration. The absence of controls, the opacity of the processes, the lack of accountability, and the manipulation of justice are all part of the systemic framework of corruption associated with government contracting.

In this regard, Article 9 of the United Nations Convention against Corruption (UNCAC, 2004), related to the commitment of States to take the necessary measures to establish appropriate government contracting systems, highlights three measures:

1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption.
2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances.
3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents. (pages 12-13)

Thus, the principles of transparency, competition, and objectivity must be applied across the board in contract management as a vital measure to break the vicious circle that has deteriorated government procurement and has evolved into complex transnational transactions.

In order to comply with the United Nations Convention against Corruption - UNCAC, States have been strengthening national policy frameworks to regulate and prevent corruption risks



related to government contracting. The measures adopted include the regulation of selection and awarding processes, the application of objective criteria for actions and decisions, the public dissemination of information in all procedures and stages of contracting, the development of digital procurement systems, and the inclusion of anti-corruption clauses in government contracts.

With regard to progress in the implementation of these measures, the Fifth Report of the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption – MESISIC⁴ highlighted that 75% of the recommendations and/or measures issued on systems for the procurement of goods and services by the states have reported progress (MESISIC, 2020). In fact, government contracting is the thematic area with the most progress, given that 40% of the actions implemented by the States to comply with the Inter-American Convention against Corruption - ICACAC are related to this issue (MESISIC, 2020).

These measures that have been implemented by the States to manage risks related to government contracting become even more relevant in the context of the emergency response to the Covid-19 pandemic. The response to this health emergency forced all governments to implement streamlined and expeditious government contracting procedures for the procurement of goods and services. Hospital equipment, the acquisition of biosecurity elements, and access to vaccines became urgent and essential purchases which, in most countries, required the relaxation of procedures or the authorization of extraordinary powers to meet the demand in a timely manner.

Likewise, humanitarian aid for vulnerable populations and the implementation of social programs created to address the social and economic consequences generated by the isolation also required urgent government investments, which had to be handled through the relaxation of regulations.

However, in general terms, the use of special powers and the relaxation of contractual management processes in themselves pose risk factors for the abuse of power and the diversion of government resources to private interests. However, the high demand on a global scale and the lack of precedents for the response to a pandemic made it necessary to resort to these extraordinary arrangements, which in turn also increased the risks of

⁴ The Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption - MESISIC is the Anti-Corruption Mechanism of the Organization of American States to analyze legal frameworks and institutions in accordance with the provisions of the Inter-American Convention against Corruption. Since its creation in 2002, MESISIC has adopted more than a hundred reports with recommendations for States to improve their legal frameworks and institutions to effectively combat corruption; the subject matter of the reports includes government contracting as a fundamental element of follow-up.

corruption in government contracting and government procurement related to the pandemic.

Various organizations and actors called on governments to take steps to prevent price speculation, fraud, and abuse of extraordinary powers in government procurement. For example, Transparency International, in coordination with national chapters in the region, issued recommendations aimed at safeguarding the transparency and integrity of government contracting in response to the response (Transparency International, 2020). These recommendations revolved around:

1. Disclosure of information and transparency of the resources allocated to the emergency
2. Integrity in the allocation and administration of resources
3. Ongoing and real time accountability
4. Economic competition for supplier selection
5. Public spending monitoring and control during the pandemic.
- 6.

2. Fulfillment of the Lima Commitment in Preventing Corruption in Public Works, Government Contracting and Procurement.

The Lima Commitment, resulting from the VIII Summit of the Americas, included a series of commitments to advance in the fight against corruption. These include some aimed at *Preventing Corruption in Public Works, Government Contracting, and Procurement*. In particular, there are two key issues in government contracting included in the Lima Commitment: the promotion of digital systems for government procurement and the inclusion of anti-corruption clauses in government contracts.

Digital systems for government procurement are a key tool to promote transparency and integrity in government contracting. Through the use of information and communication technologies, progress has been made in the streamlining of procedures, public access to information, and the expeditious control and accountability of government procurement.

The digital systems have also made it possible to increase competition among suppliers and the application of objective selection criteria, generating a better price ratio in contracting and greater participation of actors in the national economy. They have also proven to be effective tools in the fight against corruption, the modernization of the State, the strengthening of public management, and the building of trust between citizens and



institutions, since they allow organized civil society to monitor and control government contracting processes in their countries.

The inclusion of anti-corruption clauses in government contracts seeks to avoid, mitigate or report the abuse of power, vantage points, and special interests. Through this, the clauses allow the establishment of explicit obligations regarding the registration of natural and legal persons, as well as the cooperation among the parties to avoid money laundering and other acts of corruption that may materialize.

In this regard, the analysis made by the social organizations of the Citizen Corruption Observatory - COO, focused on two commitments:

- No. 27 “Promoting the use of digital systems for government procurement and contracting of services and public works to ensure disclosure, transparency, citizen oversight, and effective accountability”.
- No. 29 “Promoting the inclusion of anti-corruption clauses in all state and public-private-partnership contracts and establishing registers of natural and legal persons involved in acts of corruption and money laundering with a view to ensuring that they are not contracted”.
-

The progress of these commitments was assessed using the following policy and practice indicators:

Table 2. Government Contracting under the Lima Commitment

Commitment	Indicator	Question
27. Promoting the use of digital systems for government procurement and contracting of services and public works to ensure disclosure, transparency, citizen oversight, and effective accountability.	Policy	Is it mandatory to record government procurement and contracting processes in your country using an online form?
		Is the recording of suppliers submitting to government procurement processes mandatory?
		Are there any guidelines on the requirements for suppliers to apply for a government procurement or contracting process?
		Is there a publicly accessible digital platform available to search for government procurement and contracting processes?
		In the past two years, have any standards been developed to promote or strengthen a digital system for government contracting and purchasing?



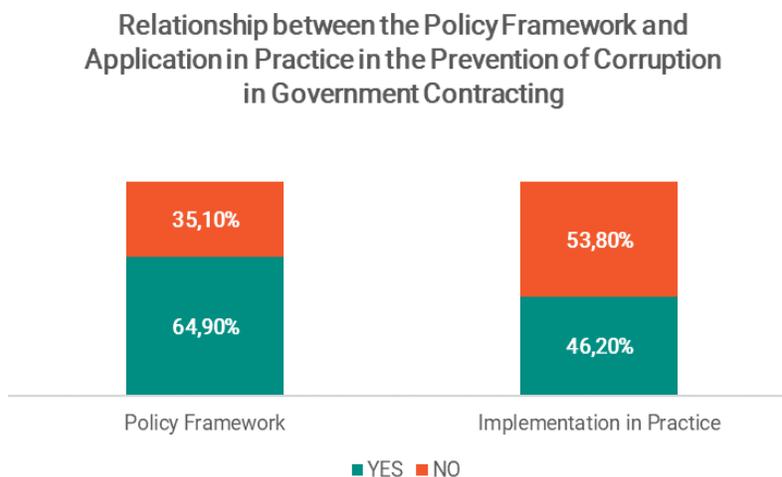
Commitment	Indicator	Question
	Practice	Do all public entities record their government procurement and contracting processes in a digital system?
		Is the information published on government procurement and contracting processes clear, comprehensive, and easily accessible to the citizen?
		Is the information and experience of the suppliers that participate in government procurement and contracting processes available?
		Can the public oversee or socially monitor the government procurement and contracting processes?
		In the past two years, have any actions been taken to promote the use of digital systems for government contracting and government procurement?
		Do you believe that over the past two years there have been significant advances in the fulfillment of this mandate?
29. Promoting the inclusion of anti-corruption clauses in all state and public-private-partnership contracts and establishing registers of natural and legal persons involved in acts of corruption and money laundering with a view to ensuring that they are not contracted.	Policy	Is the inclusion of anti-corruption clauses mandatory in all government contracts?
	Practice	If anti-corruption clauses are included in government contracts, do you believe that the inclusion of these clauses has had a positive impact?
		Is there a registry of natural and legal persons linked to acts of corruption and money laundering?
		In the past two years has the inclusion of these anti-corruption clauses prevented the contracting of individuals and legal entities linked to acts of corruption and money laundering?
		Do you believe that in the past two years significant progress has been made in the fulfillment of this commitment?

Source: CCO monitoring methodology (2021).

The following graph shows data collection results for the policy and practice indicators. Affirmative responses reflect the existence of regulations in force or public plans and policies on the subject and negative responses reflect their absence.



Graph 1. Relationship between the Policy Framework and Application in Practice in the Prevention of Corruption in Government Contracting



Source: Prepared by the author based on information filled out by the CSOs participating in the CCO.

In general terms, the results of the indicators show that more policy developments have been made to prevent corruption in government procurement than their practical application. In terms of the overall assessment of these commitments, the average score for the region was 1.28/3.00. While this is a low score, it is above the average of all the prioritized commitments (1.17/3.00) (CCO Final Report, 2021).

In this sense, it should be noted that the challenges in the fight against corruption do not only involve the issuance of new laws or regulations, but also require compliance and the implementation of actions aimed at strengthening the capacity of public servants and entities.

A more detailed look at each of the two commitments analyzed shows a difference in their overall assessment; on one hand, the promotion of digital systems for procurement received a mean scale score of 1.70/3.00. On the other hand, commitment No. 29 on the inclusion of anti-corruption clauses received a low scale score of 0.67/3.00 due to the lack of policy and practical development of anti-corruption clauses to be included in state contracts.

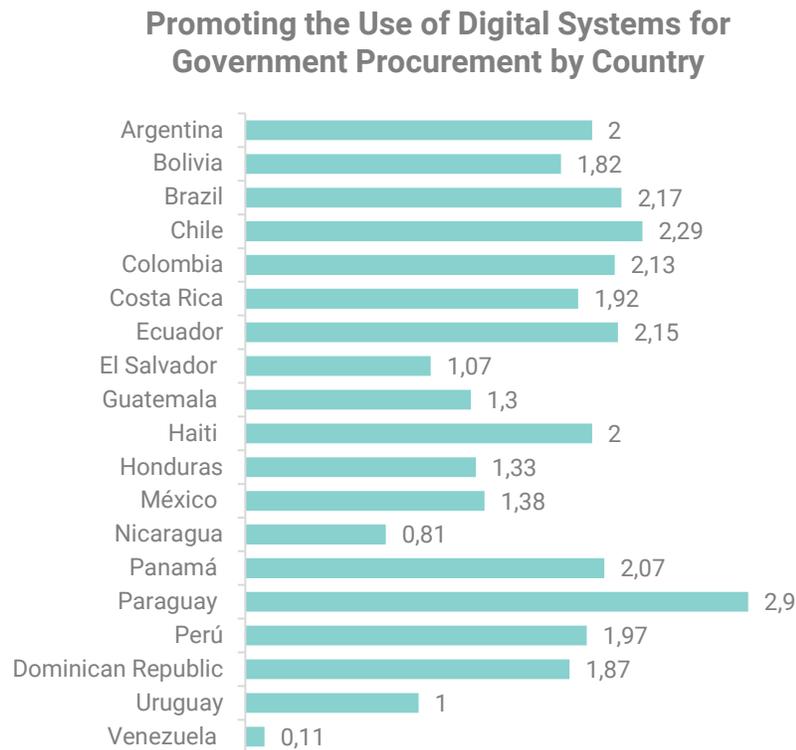
Below is the analysis with the results of the assessment, strengths, challenges, and guidelines for each of the prioritized commitments.



Commitment No. 27 on Digital Systems for Government Procurement.

In general, the results obtained in the follow-up of Commitment No. 27 show that the region has made progress in the adoption of digital systems for procurement. As mentioned above, the average score for this commitment was 1.70/3.00, but when broken down by country, there are some variations in the rating given to this commitment, as shown in the following graph:

Graph 3. Promoting the Use of Digital Systems for Government Procurement by Country



Source: Prepared by the author based on information filled out by the CSOs participating in the CCO.

The three countries with the highest ratings for the promotion of digital systems for procurement are Paraguay (2.9/3.00), Chile (2.29/3.00), and Brazil (2.17/3.00). The countries with the lowest scores in this commitment are Uruguay (1.0/3.00), Nicaragua (0.81/3.00), and Venezuela (0.11/3.00).

With respect to the policy indicators, Costa Rica, Ecuador, Panama, and Peru report full compliance. This includes the online registration of contracting processes and suppliers, alongside the existence of a digital platform for public access and query. It is worth noting



that the policy framework in Costa Rica, Ecuador, Panama, and Peru has been updated over the last two years to promote or strengthen digital systems for procurement.

In terms of compliance with the policy indicators, when analyzing cases such as Paraguay, where progress is close to 100%, reflecting a favorable outlook for preventing corruption in public works and corruption, there is still evidence of pending policy aspects such as the mandatory registration of government suppliers.

Regarding the practical implementation of these digital systems for government procurement in the region, the main weakness is that the registration and publication of information on government procurement in the platforms is not complied with by all public entities required by law. In this regard, the case of Venezuela stands out, where “the disclosure of information on government procurement and contracting processes, and on the experience of the suppliers that participate in government procurement and contracting processes was examined” (Venezuela CCO Report. 2021)⁵.

In general, the monitoring exercise carried out by Venezuelan social organizations found a decrease in the information available on amounts, dates and actors involved in state contracting. In fact, the review of the active transparency of the ministries’ web pages showed that “68% of them refrained from publishing calls for tenders, awards, and allocations of social responsibility commitments (Transparencia Venezuela, 2020, p. 174. In. Venezuela Report. CCO 2021).

On the other hand, in cases such as Colombia, in addition to policy advances, at the practical level “the country relies on SECOP as a tool for reporting all public procurement of goods and services made by national and territorial entities” (Colombia Report. CCO, 2021, p. 22), which does not reach a high score and was not considered by the Observatory as full compliance with the Lima Commitment since “in the analysis of the information available in SECOP, issues related to the quality of the data recorded, the publication times and the updating of the platform were also identified” (Colombia Report. CCO, 2021, p. 22).

On the other hand, cases such as Paraguay are also noteworthy, where the consolidation of a public entity focused on the regulation and control of government contracting is combined with the existence of a platform where all the information related to government procurement and contracting processes is publicly available. In this regard, all the organizations that comprised the Observatory in Paraguay believed that the information available is clear, comprehensive and easily accessible to citizens, allowing for social oversight or control, according to the country report:

⁵ Available at https://occ-america.com/wp-content/uploads/2021/10/Informe-Venezuela_ES.pdf

“Paraguay has one of the most modern open government contracting systems, with the General Directorate of Public Procurement being one of the pioneer institutions in the implementation of active transparency. Using the government procurement portal, it is possible to know in detail the bidding processes, state suppliers, etc.

“With regard to Open Contracting, the Public Procurement Portal shows the adoption of this standard for the publication of its data and its portal has a series of data related to State suppliers and the respective amounts of awards in State contracts, which allows for public control” (Carrillo E. TEDIC)” (Paraguay CCO Report. 2021, p. 17)

Based on the reports from the 19 countries participating in the CCO, three trends in this non-compliance can be identified.

First, local governments in the countries of the region are those that generally do not comply with the obligations to record and disclose contractual information. Most local public entities do not record contract management in digital procurement systems, widening the institutional gaps between the national and local levels.

In this regard, reports such as the one from Venezuela highlight the gap in the availability of information provided by national and regional entities:

at the local level, according to data from the Municipal Transparency Index (ITM) conducted by Transparencia Venezuela in 2017 (<http://indice.transparencia.org.ve/>), in only 22 of the 150 mayor’s offices evaluated could the land registry be accessed online, but no additional measures to decrease bureaucracy were observed. (Venezuela Report, 2021, p. 25).

Second, most of the government procurements made in response to the pandemic were not the result of price framework agreements or commercial competition scenarios, nor were they recorded or published on public inquiry platforms. Most of the reports agree that the special powers issued to contract in the context of the pandemic weakened the transparency and citizen participation mechanisms that apply in ordinary contracting regimes. For example, the El Salvador report⁶ states that “there has been no significant progress in the fulfillment of this commitment; moreover, in this time of the Covid-19 pandemic, there has been a perceived setback in the oversight and control of government contracting and government procurement” (El Salvador Report, 2021, p. 19).

⁶ Available at https://occ-america.com/wp-content/uploads/2021/09/Informe-El-Salvador_ESP.pdf



Lastly, it was identified that the information published in digital systems of procurement in the countries of the region is neither complete nor of high quality. This goes against the understanding of information as a fundamental right of citizens. Timely, clear, reliable, and easily accessible information generates trust in institutions and increases the effectiveness and accountability of the Government (Transparencia por Colombia. 2017). This is why it is crucial to advance in guaranteeing digital systems that comply with open data parameters.

In most countries, citizen query information only covers the pre-contractual phases, leaving gaps in the data on the execution and liquidation of contracts. In several cases, the records of suppliers, sources of financing and the entirety of contract documents are not published in open data that would allow citizen scrutiny. Finally, some of the country reports show that the digital systems for procurement lack interoperability with budget information systems.

In this regard, the Nicaragua report emphasizes that

while portals exist for accessing information and procedures for government contracting, they have been in existence for several years and, in many cases, do not receive regular updates to improve interaction or simplify the processes they contain. (Nicaragua Report, 2021, p. 19)

The use of open data in digital procurement systems is one of the main challenges, so it is necessary to “publish, use and improve open procurement data” (Open Contracting, 2019). These must meet quality standards so that they become a fundamental mechanism for the exercise of citizen control. Therefore, governments must produce data that allow analysis, as well as real-time monitoring of how public resources are being invested. For their part, civil society organizations and citizens in general should demand open data in government procurement, as it is a means to strengthen the impact on decision making and allows for better monitoring of resources.

Specifically on the role of civil society in monitoring government contracting, the Costa Rica report (2021)⁷ points out that the public continues to be absent as a key actor in public infrastructure; they are not consulted before, during, or after. Especially regarding institutions, they do not process the information received in the form of complaints, reports, and delays in the delivery of solutions and there is a lack of feedback on the work done by public entities in their contracting processes.

In this regard, in its Integrity Charter the Latin American Center of Administration for Development recommends the adoption of digital procurement and the availability of

⁷ Available at: <https://occ-america.com/wp-content/uploads/2021/09/1.-Informe-Costa-Rica.pdf>



information on procurement processes as a condition to “promote citizen oversight and integrity pacts, and open channels for complaints and availability of information through appropriate tools” (CLAD, 2018, p. 21).

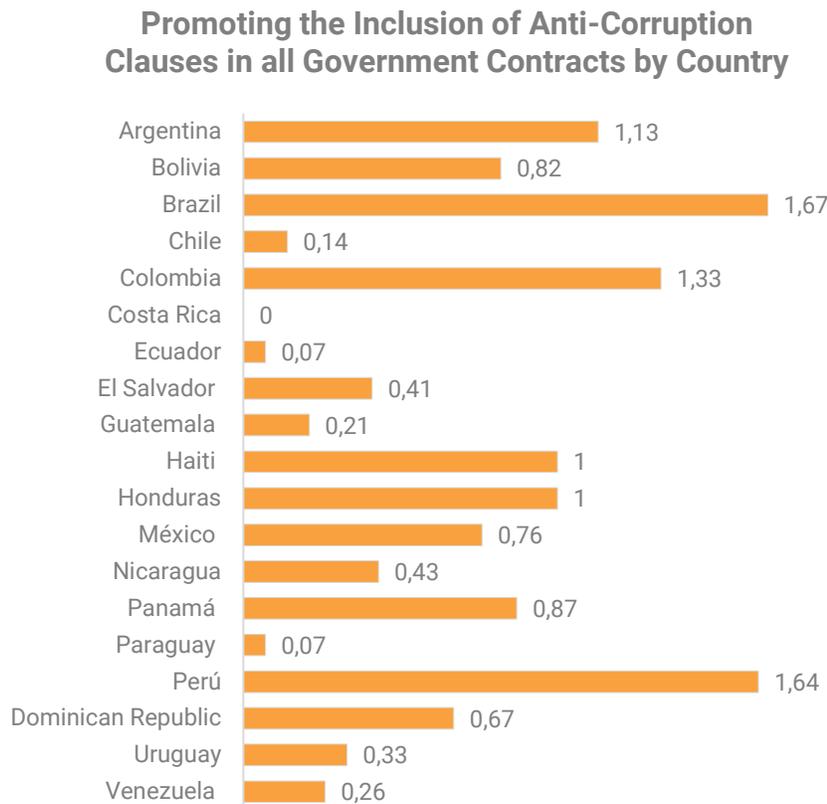
Commitment No. 29 on Inclusion of Anti-Corruption Clauses in State Contracts.

Commitment No. 29 promotes “the inclusion of anti-corruption clauses in all government contracts and public-private partnerships, and the establishment of registers of natural and legal persons linked to acts of corruption and money laundering to prevent their contracting”.

As already mentioned, the results of this commitment show low compliance in the region, since the average score for policy and practical advances is 0.67/3.00.

The following graph shows the results of the assessment made in each country for this commitment, considering the criteria of effectiveness, relevance and sustainability:

Graph 4. Promoting the Inclusion of Anti-Corruption Clauses in all Government Contracts by Country



Source: Prepared by the author based on information filled out by the CSOs participating in the CCO.





The three countries with the highest scores for the inclusion of anti-corruption clauses in government contracting are Brazil (1.67/3.00), Peru (1.64/3.00), and Colombia (1.33/3.00). In contrast, the countries with the lowest scores are Ecuador (0.07/3.00), Paraguay (0.07/3.00), and Costa Rica (0.00/3.00).

In the Costa Rica case, the organizations participating in the CCO found that “only some international corporations have clauses of this type, but they are the exception. There is no course of action, policy-based or practical, in that sense; therefore, in this commitment, progress is null” (Costa Rica Report, 2021, p. 19). In addition to the absence of the clauses, the Observatory found no developments such as a registry of companies and persons related to money laundering and corruption that would prevent companies already sentenced from contracting again with the State. (Ecuador Report, 2021)

Only 26% of the countries participating in the CCO have regulations that require anti-corruption clauses in all government contracting: Argentina, Brazil, Honduras, Nicaragua, and Peru. In this sense, the inclusion of anti-corruption clauses in government contracting is not a general pattern in the region.

It is worth noting that countries that have not included anti-corruption clauses in their policy frameworks identify alternative mechanisms to include this requirement in contracts, such as codes of conduct or ethical commitments. Other mechanisms that have been implemented to include anti-corruption clauses in procurement are global compliance commitments.

However, country reports generally mention that the impact of this measure is not significant, since they are formal mechanisms, but lack control and sanctioning powers. As stated in the Argentina country report:

while measures were taken to include anti-corruption clauses in all government contracts, their impact has not been significant as they are not accompanied by a real and solid control system and operate in a weak ecosystem to investigate and prosecute crimes against the NPA (National Public Administration, 2021, p. 19)

Conclusions and Recommendations

The results of the progress in the adoption of corruption prevention mechanisms in government contracting show that having laws is not sufficient. It is also necessary to carry out institutional strengthening actions and training activities so that the public servants and entities in charge of applying them do so effectively (MESISIC, 2020).



In this regard, the strengthening of digital systems for procurement is considered by various multilateral actors as a priority in the fight against corruption. Digital technology can provide structural solutions for contract management to have objective selection processes, ensure commercial competition and develop immediate control and monitoring mechanisms. The development of advanced e-procurement tools that are modular, flexible, scalable and secure can be a collaborative challenge that brings together entrepreneurs, civil society and governments.

The following recommendations are presented below:

- **Update the policy framework for government contracting** to commit, promote and encourage the use of digital systems for government procurement by all state entities. It should be noted that the policy update provides for concrete measures to commit and promote e-procurement in local governments, where the main lags in its implementation have been identified. The digital systems should be -as a rule- the main tool for the selection, registration, monitoring and accountability of government contracting in each of the countries of the region.
- **Develop and disseminate technical guidelines for public servants to improve the recording and disclosure of information.** This includes observing accessibility, consultation and open data requirements. Simultaneously, technical guides aimed at civil society and citizens in general should be developed to qualify public procurement consultation and oversight exercises. We suggest that both the updating of policies and the preparation of technical guides should be the result of collaborative exercises between public officials and civil society.
- **Turn the clauses into mechanisms that allow control and sanctions** so that they cease to be mere low-impact formalities. In this sense, the clauses should clearly materialize the commitment of contractors to accountability, channels for complaints, transparency of asset declarations, management of conflicts of interest and other preventive and pedagogical measures to fight corruption.
- **Develop participatory monitoring and evaluation mechanisms for anti-corruption public policies** in order to enable two-way accountability, follow-up, and timely social control by civil society and citizens in general, even taking into account regional civil society initiatives such as the Citizen Forum of the Americas.

Based on the challenges involved in government procurement for the response and reactivation of the economy in response to the effects of the pandemic, and following the



recommendations of the Organization for Economic Cooperation and Development - OECD, Transparency International and Open-Contracting, the following are recommended:

- **Special powers established for urgent contracting in the context of the pandemic need to be lifted.** Exceptions in government procurement should be prevented from becoming the rule. Addressing the initial phases of the pandemic warranted the relaxation of government contracting rules; however, economic reactivation and lessons learned about isolation and Covid - 19 response allow ending exceptional measures. Special powers established for government procurement in the pandemic must also be prevented from being incorporated into the policy frameworks, generating a setback in transparency and integrity in the contractual management of the countries.
- **The functions of the digital systems in all phases of government procurement should be expanded.** Registration and query are not the only benefits of digital systems for procurement. The systems also make it possible to structure choice mechanisms that prioritize the centralization of government contracting, framework agreements, digital catalogs, dynamic procurement, digital auctions, shared contracting, and contracts with options.



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